

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS

3
4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 v.

7 DIOVANNI CARTER,

8 Defendant.

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)
) Criminal Action
) No. 1:19-CR-10104-ADB-1
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10 BEFORE THE HONORABLE ALLISON D. BURROUGHS
11 UNITED STATES DISTRICT JUDGE

12 JURY TRIAL
13 DAY 5

14 March 6, 2020
15 9:49 a.m.

16 John J. Moakley United States Courthouse
17 Courtroom No. 17
18 One Courthouse Way
19 Boston, Massachusetts 02210

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P R O C E E D I N G S

(The Jury and defendant are not present for the following.)

MR. SULTAN: I expect that through Agent Kelsch today, the government is going to offer some pieces of an extraction of Mr. Boddie's phone, and I just thought it would be helpful to talk about those now.

We're going to be objecting to Exhibits 105 through 109 of those. I would like to address the Court on this.

THE COURT: All right. He's objecting to the Boddie extractions.

MR. SULTAN: Not the contacts list, Your Honor, which is 104, but the substantive conversations.

THE COURT: Yes. On hearsay grounds, I take it?

MR. SULTAN: Well, basically, yeah. Some of them -- not all hearsay, Your Honor, because -- could I go through them quickly? Is that all right?

THE COURT: Yes, in the next ten minutes.

MR. SULTAN: It won't take me ten minutes, Your Honor.

THE COURT: Perfect. That's what you have.

MR. SULTAN: So 105 did not occur during the pendency of the conspiracy, in any event. So these are statements -- I guess they're allegedly between Boddie and Puff, who I think the Court could find is Stewart-Rosser, Rosser-Stewart, but they're all -- none of them are during the pendency of the

1 conspiracy. So, to me, they are not co-conspirator statements.
2 They're hearsay. That's 105. 106 through 109 --

3 MR. MALLARD: It might be better to go back and forth
4 on this.

5 MR. SULTAN: Of course. Go ahead.

6 THE COURT: Yes.

7 MR. MALLARD: Your Honor, I think the best thing for
8 us to do with this is I only really would like to get number
9 one, text message number one in, which is a statement of 5 Page
10 Street from the Puff phone to Boddie.

11 THE COURT: All right. Are these in the transcript
12 book or the exhibit book?

13 MR. MALLARD: The exhibit book. And we sent updated
14 exhibits to counsel last night but not to the Court, but I can
15 provide the Court with a copy right here.

16 THE COURT: All right. You're giving me 105 to 109?
17 He's not objecting to 104.

18 MR. SULTAN: Right.

19 MR. MALLARD: And the only real ones that I'm looking
20 to get out of 105 are text message number one, which is a
21 statement of an address, which is 5 Page Street, which I think
22 helps attribute the number to Mr. Rosser-Stewart, which would
23 come in on the Mass. RMV. And then also number 30, which is --
24 I agree, it's before the conspiracy, "You and Trub don't have
25 to hit me up anymore. I'm good." And that's sent from Boddie

1 to Puff. And I don't think there was any hearsay content
2 there. I just am offering it to show the connection between
3 Puff, Trouble, and Boddie.

4 MR. SULTAN: Well, number one certainly has
5 substantive content. I mean, it's an assertion of a street
6 address. That's -- I mean, if the implied assertion is "My
7 address is 5 Page Street," that's hearsay.

8 THE COURT: I'm not sure that's the assertion.

9 MR. SULTAN: What is the assertion, then, that they're
10 trying to get it in for? That's what I understood Mr. Mallard
11 just said.

12 MR. MALLARD: The fact that it was said by the person
13 with the number.

14 THE COURT: I'm not sure it's coming in -- like,
15 what's the truth of that?

16 MR. SULTAN: Well, they said it matches up with some
17 other documents. So they're trying to establish that this is
18 somebody's true address. Otherwise, it has no relevance to
19 anything. The truth -- "My address is 5 Page Street," that's a
20 factual assertion.

21 THE COURT: It could be, like, "Let's meet at 5 Page
22 Street" or "I was at" -- like, I'm not sure -- it's just coming
23 up to show that it's not a familiar address, right?

24 MR. SULTAN: Maybe Mr. Mallard could explain how it
25 connects up. I thought he just did.

1 MR. MALLARD: The Mass. RMV is going to say that
2 it's -- it's a separate document. Mr. Stephan Rosser-Stewart
3 lives at 5 Page Street. The mere fact that the phone number
4 associated with Puff saying 5 Page Street, by itself I think
5 has value that is nonhearsay from the fact that it was said.

6 MR. SULTAN: The fact that it was said means nothing.
7 It's only significant if it's a truthful statement of his
8 address. That's what it's being offered for. Mr. Mallard just
9 confirmed that's what -- I mean, they keep saying it's not
10 hearsay. Something offered for the truth is hearsay. If it's
11 not being offered for the truth, it's not relevant. It's just
12 a number and a street name. What does that have to do with
13 anything? So I say it's --

14 THE COURT: I'll think about that one.

15 THE CLERK: Do you want him out?

16 THE COURT: Sure.

17 (The Defendant is present for the following.)

18 MR. SULTAN: 30, I mean, I guess all -- I guess what I
19 would say about 30 is 403. I mean, 403 and relevance. It
20 doesn't say anything. It doesn't say anything of value to the
21 jury in determining anything --

22 THE COURT: It shows the relationship between the
23 three of them. 30 I am going to allow.

24 MR. SULTAN: So on 106 through 109, I guess they're
25 going to argue that these are statements by the defendant.

1 There hasn't been any evidence so far connecting the defendant
2 to these phone numbers. These documents are not -- the
3 statements are not self-authenticating; that is, 106, 107, and
4 108 are not self-authenticating, and 109 isn't
5 self-authenticating.

6 109 says -- suggests that it's not the defendant,
7 "Hey. Dio doesn't have his phone right now. Dio isn't around
8 me. Okay." I mean, that's hearsay. It's all hearsay.

9 THE COURT: All right. You have four minutes left,
10 Mr. Mallard, or else you're going to have to resume this at
11 noon.

12 MR. MALLARD: I think what I'll do, Your Honor, is
13 I'll concede -- I don't think there's much probative value for
14 108, 109, and 107. I'm going to tell you that 106, Your Honor,
15 the subscriber information --

16 THE COURT: Wait. 108, 109, 107. That leaves us with
17 106, right?

18 MR. MALLARD: 106. The initial text message on this
19 says, "Yo, bro. This Trub," which I think is fairly going to
20 be linked to Trouble, the defendant's street name, which has
21 already been established by a witness here today, will also be
22 established by one of the keepers of the record from the jail
23 who's going to have the street name come in.

24 Additionally, the subscriber info for this phone is
25 going to be in the name of Nancy Carter, 108 Moraine Street, an

1 address with which Mr. Sultan has already put in as being
2 associated with the defendant. And I think Trooper Sullivan
3 described it as his nana's house.

4 THE COURT: Where did this phone come from?

5 MR. MALLARD: This phone number?

6 THE COURT: The phone. Is it an extraction from the
7 phone or an extraction from, like, the phone company?

8 MR. MALLARD: This is Boddie's phone from Boddie's
9 house at 82 Carl Avenue.

10 THE COURT: Which messages are you trying to get in on
11 106?

12 MR. MALLARD: I would offer all of these messages as
13 statements of the defendant except for the -- well, there's
14 only one or two statements from James Boddie in response, and
15 I'd offer them for context.

16 MR. SULTAN: Your Honor, I would submit there's no
17 proof that this is the defendant. If the Court wants to let it
18 in de bene, and they take the risk that they're not going to be
19 able to connect the phone up to him, I would understand that.

20 MR. MALLARD: I can also tell the Court that the
21 device associated with this number was seized through the
22 defendant at his arrest. It's a Motorola phone matching the
23 IMEI. The evidence officer who received it -- Trooper Sullivan
24 testified that he took the phone from the defendant.

25 MR. SULTAN: He didn't testify to anything about this

1 phone.

2 MR. MALLARD: Thank you, Counsel.

3 Trooper Sullivan took a phone and it went into
4 Brockton evidence. We are going to have an evidence officer
5 say it was a black Motorola with a certain IMEI. The IMEI is
6 going to match the subscriber information associated with this
7 phone number. There's going to be a full link -- it's probably
8 going to be the most proven beyond all possible doubt that this
9 is, in fact, the phone that was on the defendant when he was
10 arrested.

11 MR. SULTAN: If they can do it, they can do it.

12 THE COURT: Okay.

13 MR. SULTAN: Last thing, Your Honor. One minute.
14 Something else. They're going to try to put in a Google search
15 history. This is Exhibit 116.1, I think. I think that's the
16 one they are going to put in. This is a search history on what
17 they claim is Mr. Carter's Google account. It's goes for two
18 and a half months, from 11/16/18 to 2/2/19. It's, I don't
19 know, pages and pages and pages long. It's everything that was
20 ever searched for under that account.

21 It is -- 99.9 percent of it is clearly not relevant.
22 It's got a lot of stuff in there that I wouldn't want the jury
23 to see because I think it's unfairly prejudicial and has zero
24 probative value. So, to me, they should absolutely not be able
25 to put in the entire search history.

1 And then, more specifically, I pointed to, I think, on
2 January 26th and 27th there were searches for "Glock 47,"
3 "Build your own Glock." There's no Glock involved in this
4 case, Your Honor. I think under 403 and under 401, those
5 should not be admissible.

6 And, finally, there were searches on January 27th for
7 Jessica Tripp. Jessica Tripp is a criminal defense lawyer. To
8 me, it is an impingement on -- I don't know whether it was
9 Mr. Carter or somebody else looking up Jessica Tripp's name,
10 but to suggest there was some kind of inference that can be
11 drawn against the defendant --

12 THE COURT: What date was that?

13 MR. MALLARD: The next morning, Your Honor, about
14 9:30.

15 MR. SULTAN: Inadmissible.

16 THE COURT: How are you intending on using this?
17 Because if they want to put in that he, you know, searched for
18 a T-Mobile store in the days before or the day --

19 MR. SULTAN: Somebody did. I agree, that's relevant.

20 THE COURT: So some of it is definitely going to come
21 in. If they want to put in that no one searched for T-Mobile
22 store any other time, that's fine, too. But I take his point,
23 that there's things in here that are probably -- you want this
24 in for chalk? You want to redact it? Like, how do you want to
25 do it?

1 MR. MALLARD: I'm open to what the Court thinks is
2 permissible. I just think it's important for the jury to
3 understand that there is a complete and full record of all this
4 activity. "T-Mobile" does not appear any time before that
5 January 26th.

6 If we have to redact out the content for the Court to
7 be comfortable with the admission, I would suggest that the
8 redactions start -- go from whatever November period it starts
9 until January 16th when the car is in his possession and then
10 continue on.

11 MR. SULTAN: I have a simple suggestion, Your Honor.
12 I have no problem with Agent Kelsch, who is going to put this
13 in, saying "I reviewed the entire search history from November
14 to February, and the only day that 'T-Mobile' was mentioned was
15 January 26th." Then it's in. We don't have to try to create a
16 three-line document out of a 30-page document.

17 THE COURT: Let me ask you this: Would you stipulate
18 to that, what's in the document?

19 MR. SULTAN: I won't contest it. I hate the word
20 "stipulation."

21 THE COURT: I know. Let's just say that they want
22 something to corroborate his testimony, right? I mean, they do
23 have corroborating documents, but I take your point on it. And
24 I think they're entitled to have the information corroborated
25 by the paper.

1 MR. MALLARD: There's also an attribution issue,
2 Judge. He's contesting whether or not, I'm assuming, that
3 these are his searches, and there's a frequent pattern that
4 this defendant does of searching for "Universal Hub"
5 essentially every morning. And that happens. Boom. Universal
6 Hub, Universal Hub.

7 There are searches for "Capital One," which we already
8 know now from other testimony is pertinent to this defendant.

9 There's other searches for "Hertz" during other dates
10 that all attribute this device and this issue to this defendant
11 that I think merit coming in, especially when he's contesting
12 identity.

13 THE COURT: All right. Let's -- the jury is here, so
14 Karen is going to go get them. What we'll do is we'll mark it
15 for identification. We'll sort out how it comes in later,
16 either at lunch or next week.

17 MR. MALLARD: I anticipate him testifying this
18 afternoon.

19 THE COURT: That's fine. I don't think it makes -- I
20 mean, there's parts of this that you want to show him, right?

21 MR. MALLARD: I would like to show the jury, as well.

22 THE COURT: So there's part of it that are going to
23 come in, in some form or another. I'm going to let him show
24 those parts to the jury.

25 MR. SULTAN: What parts are those, Your Honor?

1 THE COURT: I want you to finesse around it. So
2 figure out what you're going to show them, and I'll rule on it
3 if I need to. Or if you want to show them, like, those
4 searches, you can show them that.

5 MR. MALLARD: I think my time period of focus is going
6 to be -- the time period I really want to focus on is January
7 25th forward. But, you know, to the extent that there's other
8 pieces that tend to show identity in who's using the device,
9 which I think the pattern is there -- I just don't want to be
10 in a position where the Court is making a judgment about
11 excluding it, and then at closing I get to hear about how they
12 haven't shown you that this is his account.

13 THE COURT: I'm not going to exclude it, but I want --
14 I mean, there is no relevance to this case to lots of these
15 searches.

16 MR. MALLARD: I certainly agree.

17 THE COURT: I don't know what they say. I haven't
18 looked at them, but there's pages and pages of him talking
19 about drug trafficking. That should not go to the jury.

20 MR. MALLARD: I don't disagree with the Court on that.

21 THE COURT: So what I want to figure out is what you
22 need, whether it's admissible, and how we're going to get it
23 admitted. But the jury is here. Nobody raised this until ten
24 minutes before they were coming in. I can't go through it line
25 by line.

1 So what I'm suggesting is that either we sort it out
2 at lunch, if there's time to do it, or we just mark it for
3 identification and you show them what -- the parts that we can
4 agree are going to come in, in some form or another.

5 MR. MALLARD: I think lunch might be the best
6 opportunity.

7 THE COURT: Mr. Sultan, my suggestion is that you look
8 at everything from January 25th forward and figure out if
9 there's anything that you're objecting to.

10 THE CLERK: All rise for the jury.

11 (The Jury is present for the following.)

12 THE CLERK: Court is in session. Please be seated.

13 THE COURT: Resuming with Mr. Files.

14 MR. MacKINLAY: Walking through at this time, Your
15 Honor.

16 THE COURT: Welcome back, everyone. Happy Friday.

17 THE JUROR: Good morning.

18 THE COURT: Just a reminder, you are still under oath.
19 For the jury, you notice I don't say that to people after lunch
20 break or after a recess. I always say it to them after a
21 night. That's my line. So I'm just reminding you, you are
22 still under oath.

23 THE WITNESS: Thank you.

24 THE COURT: When you're ready, Mr. MacKinlay.

25 SAMUEL FILES, having been previously duly sworn by the

1 Clerk, was examined and testified as follows:

2 DIRECT EXAMINATION, Continued

3 BY MR. MacKINLAY:

4 Q. Mr. Files, when we left off, you were describing the
5 fingerprint process, the latent fingerprint examination that
6 you've conducted in this matter; do you remember that?

7 A. Yes.

8 Q. And we also left off, in particular, you were discussing a
9 case that you were assigned under your Case Number 19PCS463; do
10 you remember that?

11 A. That's correct, yes.

12 Q. And we put some photographs of your examination in, but we
13 didn't really talk about them; would that be true?

14 A. Yes.

15 Q. I want to bring up one of the exhibits that we did admit
16 yesterday and have you discuss what you did with respect to
17 this photograph in your examination, okay?

18 A. Yes.

19 MR. MacKINLAY: May I have Exhibit 43.2, please.

20 BY MR. MacKINLAY:

21 Q. What is depicted in this Exhibit 43.2, Mr. Files, and how
22 did you use it during your examination in latent fingerprinting
23 comparison?

24 A. Sure. So what this is is a screenshot of the AFIS system
25 that I used during my work. This specifically is a case 463.

1 Every case that I get has its own set of evidence. So this is
2 one of the latents from 463 that I scanned in.

3 So this is from -- I received essentially a clear
4 piece of plastic with a piece of tape over it that has the
5 actual latent lift on it. And I would scan that into the
6 system using a scanner, and it comes up like this. At which
7 point these yellow little circles with tails here, those are
8 marking for minutiae.

9 So essentially wherever I click, it creates a circle,
10 and then I drag the tail. And depending on whether it's a
11 bifurcation where a ridge splits into two or if it's a ridge
12 ending, where a ridge stops, I will pull the tail to a
13 different direction just to mark whether it's one or the other.

14 And once I reach a certain number of points, I will
15 submit it. So once I submit it -- I basically tell the
16 computer to spin it 360 degrees and check it against every
17 record that it has in its system.

18 Q. And, again, when you started, you said you scanned in the
19 latent image from the latent lift, correct?

20 A. That's correct.

21 MR. MacKINLAY: Can I have the monitor, please, for
22 the witness only. Can I have Exhibit 34, please.

23 BY MR. MacKINLAY:

24 Q. I'm showing you what we've marked as Exhibit 34. Do you
25 recognize that?

1 A. Yes, I do.

2 Q. What is it?

3 A. That is the plastic piece of -- the piece of plastic that
4 I receive latents on if they are powdered and taken from a
5 scene.

6 Q. And that's a photograph of the latent lift itself?

7 A. Yes, it is.

8 Q. Does it fairly and accurately show the markings of the
9 latent lift that you processed and later input into the
10 computer to assist in Exhibit 43.2?

11 A. It doesn't look quite as clear as in person, but it is the
12 same lift, yes.

13 MR. MacKINLAY: I would offer 34 into evidence,
14 please, Your Honor.

15 MR. SULTAN: It's in, Your Honor.

16 THE COURT: I have it as already in.

17 MR. MacKINLAY: I'm sorry, Your Honor?

18 THE COURT: It's already been admitted.

19 MR. MacKINLAY: 34, thank you.

20 THE COURT: Through Mr. Fowler, I believe.

21 MR. MacKINLAY: Thank you, Your Honor.

22 Request to publish Exhibit 34.

23 BY MR. MacKINLAY:

24 Q. Can you describe for the jury what's listed in Exhibit 34,
25 please.

1 A. So when an officer goes to a scene and they are looking
2 for fingerprints, they'll use a type of powder that essentially
3 sticks to the residue left behind by a fingerprint. And if
4 they do find something that they think is of value, they
5 essentially have lifting tape. It's clear tape that they stick
6 on top of it and pull it off, and it will come up with the
7 ridges that they found. At which point, they'll put it onto a
8 clear piece of paper, put it into a sealed envelope, and that's
9 what I receive to analyze.

10 MR. MacKINLAY: Exhibit 43.2, please.

11 BY MR. MacKINLAY:

12 Q. And, essentially, that's the image of the latent lift that
13 you just described, correct?

14 A. Correct.

15 Q. What's the next step in your examination process of the
16 latent fingerprint?

17 A. So once I've submitted a print, it takes time. Obviously,
18 the computer needs to go through the records that it has, and
19 there are quite a lot. And it will give me back a -- within a
20 separate screen I have a list of all of my pending cases, and
21 these pending cases will have a list of candidates within them,
22 which I will then look at one to one to compare the minutia to
23 each other.

24 Q. Were you requested to make a comparison to a particular
25 ten print card following your receipt of these potentials?

1 A. Yes. So originally the way that the computer system works
2 is if it thinks that a candidate is a match, it will give the
3 best card within the system, but that isn't necessarily the
4 only card within the system. And in this case, I was requested
5 to use a card from the Plymouth County facility.

6 Q. And did you do that?

7 A. Yes, I did.

8 MR. MacKINLAY: Could I have Exhibit 44 for the
9 witness only, please.

10 BY MR. MacKINLAY:

11 Q. I'm showing you an item and ask you if you'd take a moment
12 and look at it. Do you recognize that?

13 A. Yes, I do.

14 Q. We brought it --

15 MR. MacKINLAY: Zoom in on the top piece just so we
16 can see it a little clearer, please.

17 Q. Again, do you recognize that, Mr. Files?

18 A. Yes, I do.

19 Q. What do you recognize it to be?

20 A. That is the tenprint card that I was requested to use to
21 make my comparison.

22 Q. And does it -- is the card a card taken from the booking
23 at the Plymouth County Correctional Facility?

24 MR. SULTAN: Objection, Your Honor. How does he know?

25 THE COURT: Well, if he knows. If he doesn't know, he

1 doesn't know.

2 A. So you can see here --

3 MR. SULTAN: Objection. He's doing it from looking at
4 the document. Foundation, Your Honor. The document is not in.

5 MR. MacKINLAY: May he answer the question, Your
6 Honor, and he'll explain that?

7 THE COURT: Answer the question, and then we'll see
8 where we are.

9 A. Sure. So cards all have an OBTN number, which is right
10 there. OBTN numbers are specific to where the card was created
11 during booking. JPHC is for the Plymouth Correctional
12 Facility, which is also a contributing department and agency
13 here. And we also have Wayne Carol, who works within the
14 Plymouth Correctional Facility, who does booking there and
15 takes these fingerprints.

16 BY MR. MacKINLAY:

17 Q. Are fingerprint cards like this made in the ordinary
18 course of business at the Plymouth County Correctional
19 Facility?

20 A. Yes, they are.

21 Q. Are they a regular part of the booking procedure?

22 A. Yes, they are.

23 Q. And are they kept by the facility in the ordinary course
24 of business?

25 A. Yes, they are.

1 Q. And are they accurate -- is the information included on it
2 accurate at the time it's inputted into the system?

3 A. Yes, they are.

4 MR. MacKINLAY: I would offer Exhibit 34 into
5 evidence.

6 MR. SULTAN: I would object, Your Honor. Wrong
7 witness. And there's also something specific on here, if the
8 Court is going to admit it, that I would like to address the
9 Court on at sidebar.

10 THE COURT: All right. Come up to sidebar.

11 (At sidebar.)

12 MR. SULTAN: My first objection is that this
13 fingerprint analyst can't possibly authenticate a fingerprint
14 card somebody else made somewhere else.

15 Number two, if the fingerprint part is the part he's
16 going to be dealing with, tied to the defendant's name, that
17 stuff has to be off.

18 THE COURT: The alias portion needs to be redacted.
19 Are you putting on the fingerprint taker?

20 MR. MacKINLAY: I'm putting on a keeper of records.
21 It will be the next witness who will authenticate the card as a
22 the keeper of records from the booking department. So at
23 worse, Your Honor, we could take it de bene.

24 MR. SULTAN: I agree.

25 THE COURT: It's out of order.

1 MR. MacKINLAY: I just didn't have a chance to give
2 counsel a heads-up this morning that that was the order that I
3 had in here yesterday.

4 THE COURT: That's fine.

5 MR. SULTAN: This needs to come off?

6 THE COURT: That needs to be redacted.

7 MR. MacKINLAY: I disagree on that.

8 THE COURT: Why?

9 MR. MacKINLAY: Because that's the usual part of the
10 process.

11 THE COURT: Where did it come from?

12 MR. MacKINLAY: Him.

13 MR. SULTAN: How does he know?

14 THE COURT: Where did it come from?

15 MR. MacKINLAY: It came from the defendant. That's
16 booking information. The booking officer will say the same
17 thing.

18 THE COURT: Is the booking officer going to testify
19 that the defendant provided that information?

20 MR. MacKINLAY: During the usual course of booking,
21 they asked the alias; they provided the alias; they imported it
22 into the system; it's on the booking sheet.

23 THE COURT: If it doesn't come from him, I'm not
24 running a past criminal history and extract --

25 MR. MacKINLAY: Let me take another -- I don't mean to

1 interrupt the Court. He has a tattoo with the name "Trouble"
2 on his arm, Judge.

3 MR. SULTAN: They can get that in through the booking
4 officer.

5 THE COURT: I just don't -- I don't know where that
6 comes from. I don't know if it comes from the criminal record
7 or if it comes from --

8 MR. MacKINLAY: Booking. And his tattoo is "Trouble"
9 on his forearm.

10 THE COURT: They asked him what his alias or street
11 name was, and he said "Trouble"?

12 MR. MacKINLAY: How else would they get their alias?

13 THE COURT: It comes off the criminal history.

14 MR. MacKINLAY: They don't do that, though. They take
15 the information --

16 THE COURT: Before that comes in, somebody needs to
17 testify about where that came from.

18 MR. MacKINLAY: Okay. So make the document de bene
19 and let his testimony go forward, and we'll hold off on that
20 until such time --

21 MR. SULTAN: And don't show it.

22 THE COURT: I will admit it, not de bene, because I'm
23 entrusting you are going to do what you say you are going to
24 do. So I'm going to admit the exhibit. My suggestion is you
25 put a piece of tape or paper over that until we can sort out if

1 it properly comes in.

2 MR. MacKINLAY: I understand. I'll do that now rather
3 than using the doc cam -- I'll use the doc cam rather than the
4 computer system for this exhibit.

5 THE COURT: That's fine.

6 And if you want, either -- so do I have that exhibit
7 in my book?

8 MR. MacKINLAY: This?

9 THE COURT: Yeah.

10 MR. MacKINLAY: Yes.

11 THE COURT: So I'm willing to pull mine out and just
12 black it out, and now I'll do it for you.

13 MR. MacKINLAY: We can always print --

14 THE COURT: Because it may come in. I want you to
15 not --

16 MR. MacKINLAY: We can print another one, but thank
17 you very much.

18 THE COURT: All right.

19 (End of sidebar.)

20 MR. MacKINLAY: Your Honor, I would offer Exhibit 44
21 into evidence at this time.

22 THE COURT: Yes, it's admitted.

23 (Government Exhibit 44 received in evidence.)

24 MR. MacKINLAY: And request to publish using the
25 document camera.

1 THE COURT: Yes.

2 THE CLERK: You just need to turn it on.

3 THE COURT: Well done, Mr. MacKinlay.

4 BY MR. MacKINLAY:

5 Q. Do you recognize this document, sir?

6 A. Yes, I do.

7 Q. Okay. Is this the tenprint card that you used in your
8 examination to make the comparison to one of the latent lifts
9 that you received to analyze in this case?

10 A. Yes.

11 Q. What's the next step in your procedure when you have a
12 tenprint card and you have a latent lift input into the
13 system -- your computer system that you've described?

14 A. I will look at the latent print next to the known print,
15 and I will essentially look for something called a target
16 group. This is usually a core or a delta within a fingerprint.
17 It's a focal point. It's something that I can recognize easily
18 in both prints. And from there, I will start to look at the
19 minutiae to look for either similarities or dissimilarities
20 between the prints.

21 MR. MacKINLAY: Can I have a split screen, please,
22 Exhibit 43.3 and 43.4. And, again, this will be for the jury,
23 as well. These were all admitted yesterday, Your Honor.

24 BY MR. MacKINLAY:

25 Q. Do you see what's in front of you, sir?

1 A. Yes, I do.

2 Q. What is it?

3 A. This is what my comparison screen would look like. I
4 get -- the prints on -- usually it starts as, like, a single
5 screen. I blow it up so that I can see it on two separate
6 screens just for ease of use. I have some tools there to just
7 zoom in on the prints and maybe change the contrast a little.
8 But that's essentially the comparison screen that I'm working
9 with.

10 Q. And so, just to orient us, on the left side is what?

11 A. The left side is the latent.

12 Q. And on the right side is what?

13 A. The known print that is the candidate for comparison to
14 the latent.

15 Q. And, essentially, the right side is the image of Exhibit
16 44?

17 A. Yes, specifically a finger nine.

18 Q. Very well.

19 MR. MacKINLAY: Can I have Exhibits 43.5 and 43.6 side
20 by side again, please.

21 BY MR. MacKINLAY:

22 Q. Do you recognize these photographs?

23 A. Yes, I do.

24 Q. Describe in your process of evaluating and examining the
25 latent print to the tenprint card what you did utilizing these

1 photographs, please.

2 A. Sure. So once I get those blank -- the blank comparison,
3 I will -- so here I will look at the target group. So here the
4 target group would be the core here. You can see the little,
5 like, recurve there. So I can start there with my target
6 group, and I will essentially look for any minutiae I can find.
7 From there, I will look for minutiae that's close to it. I
8 will go back and forth between the two, looking for similar
9 minutiae and noting any discrepancies between the two prints.

10 Q. What did you do next in your examination?

11 A. So once I had reached a sufficient number of points that I
12 believed that there was an individualization I could make, I
13 would print out these sheets, both the blank and the filled
14 ones, and I would give the blank ones to Paul Sousa for
15 verification.

16 Q. Did you do that -- did you reach that conclusion relative
17 to your examination of these latents in this tenprint card?

18 A. Yes, I did.

19 Q. And did you give it to Paul Sousa for purposes of
20 verification?

21 A. Yes, I did.

22 Q. Do you have an opinion, based on your training and
23 experience, as to the evaluation of an examination of the
24 latent fingerprint that was submitted to the tenprint card that
25 we just described?

1 A. Yes. I was able to make an individualization with this
2 latent to finger nine of Diovanni Carter.

3 Q. Finger nine is which finger, again?

4 A. Finger nine is the left ring finger.

5 Q. Did you go on in your examination to look at other prints
6 from the tenprint card?

7 A. So, in this case, you can see over here on this print,
8 where I've drawn that line, the left side of it is not very
9 clear. And there is some clear minutiae on the left side of
10 the latent, so I did do a second analysis on finger nine.

11 So when you get a tenprint card, they do a roll of
12 each of the fingers, and then at the bottom of the card they
13 slap fingers down. It's called a slap. And I did do a
14 comparison to the finger nine slap as well as the finger nine
15 roll.

16 MR. MacKINLAY: May I have Exhibit 43.7 and 43.8 split
17 screen, please.

18 BY MR. MacKINLAY:

19 Q. Again, what did you do -- what is the significance of
20 these two photos in your examination, the second examination of
21 what you described as the flat scan or flat print?

22 A. Yeah, a rolled print. This is a slap print. Again, it's
23 just they lay the fingers flat at the bottom of the tenprint
24 card.

25 And the main reason that I did do this was because

1 the left side of this slap over here is much clearer than the
2 roll. So I wanted to just look at that side, as well.

3 Q. And did you conduct that comparison, again utilizing the
4 points that you described in your computer program, from both
5 images?

6 A. Yeah. I redid the comparison using the same methods.

7 MR. MacKINLAY: May I have Exhibit 43.9 and 43.10
8 split screen, please.

9 BY MR. MacKINLAY:

10 Q. What is depicted on these two exhibits, sir? And describe
11 your analysis of the items utilizing those photographs.

12 A. So this is my comparison of the latent to the finger nine
13 slap from the same card. And I, again, came to the same
14 conclusion, that it was an individualization.

15 Q. And the individualization was to whom?

16 A. Diovanni Carter.

17 Q. And which finger?

18 A. Finger nine.

19 Q. Now, you had another latent print that was submitted to
20 you for analysis, as well?

21 A. Yes. So latent four was another print that was of value
22 that I did do an analysis and comparison of.

23 Q. Did you follow the same procedure with this?

24 A. Yes, I did.

25 Q. And did you reach an individualization relative to the

1 other print?

2 A. Yes. So this print came back to a civilian. So I did not
3 have a name at the time I did a comparison to it, and I got it
4 verified by Paul Sousa.

5 MR. SULTAN: Objection. Move to strike on
6 verification by somebody else.

7 THE COURT: Sustained.

8 BY MR. MacKINLAY:

9 Q. The process was followed, the same process you described?

10 A. Yes.

11 Q. You analyzed it in the same way that you analyzed this,
12 correct?

13 A. Yes.

14 Q. And the -- what tenprint card did you use to make the
15 comparison to the latent print of this item?

16 A. So the tenprint card was -- it was a civilian card, and it
17 has -- I don't have the tenprint card because it's kept within
18 the AFIS system. I can't get civilian cards.

19 Q. But the card itself was a Massachusetts State Police --

20 A. That's correct.

21 Q. -- card, correct?

22 A. Yes.

23 Q. And did you follow the same analysis utilizing the same
24 procedure and imaging of the latent print to the tenprint card
25 that was provided?

1 A. Yes.

2 Q. And was the process or your outcome verified by Paul Sousa
3 who works for your department?

4 MR. SULTAN: Objection. Same objection, hearsay.

5 THE COURT: I understand the objection, Mr. Sultan.

6 BY MR. MacKINLAY:

7 Q. Does the documentation of ACE-V require verification?

8 A. Yes.

9 Q. Did you review the documentation of the V section of your
10 processing methodology?

11 A. Yes.

12 Q. Who did the V section in this case of the second latent
13 print, as well?

14 A. Paul Sousa.

15 THE COURT: Overruled.

16 BY MR. MacKINLAY:

17 Q. That individualization that you did, again, just to be
18 clear, did you have an opinion based on your training and
19 experience relative to the second latent print in terms of the
20 comparison to the tenprint card that you described?

21 A. Yes. It was an individualization to that civilian card.

22 Q. At some point did you determine the name of the person
23 through the verification process of that civilian?

24 A. Yes. So I don't get the name when I do the search, but we
25 do request the name of civilian cards. We have to submit a

1 request to the state identification arm, and they will give us
2 a name back if we have a sufficient reason. So in this case,
3 because we were making an ID to the civilian card, we were
4 given back the name Andy Sousa.

5 MR. MacKINLAY: Just one moment, please, Your Honor.

6 (Pause.)

7 MR. MacKINLAY: Nothing further.

8 CROSS-EXAMINATION

9 BY MR. SULTAN:

10 Q. Good morning, Mr. Files.

11 A. Good morning.

12 Q. So you have some latent prints that you were given to
13 analyze, right?

14 A. That's correct.

15 Q. Okay. And in this case you were given six prints -- is
16 that what you call them? Do you have another name for them?

17 A. Latent lifts is a --

18 Q. Lifts. That's the name.

19 A. Sure.

20 Q. All right. You were given six lifts that -- and you were
21 told that those six lifts came from a particular vehicle,
22 right?

23 A. Two came from a cell phone box.

24 Q. Oh, okay.

25 A. Three came from the vehicle, and one came from an iPhone.

1 Q. Okay. I apologize. You were told that three of them came
2 from the vehicle?

3 A. That's correct.

4 Q. Okay. And the three that came from the vehicle were Lifts
5 3, 4, and 5; is that right?

6 A. That's correct.

7 Q. Okay. So you've got those lifts, and now you're going to
8 make a comparison, right?

9 A. Correct.

10 Q. Okay. So where do you get -- what are you making a
11 comparison to?

12 A. A tenprint card, so a specific finger from a tenprint
13 card.

14 Q. So you're given tenprint cards?

15 A. Well, so the way that the AFIS system works is I would
16 create -- when I analyze the print, I create a geometric
17 pattern, which is essentially the minutiae and their
18 relationship to each other. The computer system uses that.

19 And when it gets a tenprint card, it does an analysis
20 of all of the prints on that tenprint card. And it would
21 compare the pattern that I created to the pattern on the cards.

22 Q. So you have got to input certain tenprint cards into the
23 system; is that right?

24 A. I don't input any tenprint cards into the system. They
25 are inputted during booking by the officers.

1 Q. Okay. So that's why you had Diovanni Carter's tenprint
2 card, right?

3 A. That's correct.

4 Q. Okay. And you said before, you're not given names. Did I
5 hear you correctly?

6 A. On civilian cards I'm not given names. Otherwise, I have
7 to look down at the demographics. It doesn't give me a name
8 initially. I have to go in and look at the details of the
9 specific comparison.

10 Q. Well, you testified on direct that you knew that this
11 was -- you said that you individualized one of these
12 fingerprints to Diovanni Carter, right?

13 A. That's correct.

14 Q. So you knew his name, right?

15 A. Right.

16 Q. Okay. Now, did you have a tenprint card for Terrell
17 Jackson?

18 A. I'm not sure. I can search the database for specific
19 tenprint cards. But in this case, I didn't search for any
20 specific tenprint cards.

21 Q. So you didn't do a specific search for Terrell Jackson?

22 A. I did not.

23 Q. When you say "civilian," what's a civilian?

24 A. So in the AFIS system, there's basically two kinds of
25 cards. There are cards from bookings, which is when someone is

1 arrested and booked, they get their fingerprints taken. There
2 are other reasons cards may end up in the AFIS system. I don't
3 know an exhaustive list of all of the reasons, but one of the
4 main reasons is firearm licensing.

5 Q. Okay. So you were searching a system that has got
6 millions of people's fingerprints in it; is that correct?

7 A. I don't know how many people are in the system.

8 Q. Okay. Now, the latent print that you connected to my
9 client, Diovanni Carter, that came from a certain location on
10 the car, right?

11 A. That's correct.

12 Q. Okay. It didn't come from the driver's side of the car,
13 did it?

14 A. No, it did not.

15 Q. It came from the right side of the car, right?

16 A. I believe it was the right rear side of the car.

17 Q. Okay. The right rear side of the car?

18 A. Yeah, passenger side --

19 Q. Okay.

20 A. -- rear.

21 Q. Okay. And am I correct that you ran -- that you -- this
22 was not a good print, was it?

23 A. It's a reasonable print. I've seen far worse.

24 Q. Well, did you say it was a fair quality?

25 A. Yeah. I usually use -- so when I analyze prints, if I

1 believe that they are of value, I call them fair. The only
2 time something is a good quality print is if it is of the
3 quality that I would expect from, like, a tenprint card. Like,
4 if it is a full fingerprint with all the detail there, I would
5 call it good quality. Otherwise, I call it fair quality if I
6 think it's still of value.

7 Q. Okay. And do fingerprints kind of fade over time?

8 A. Yes. So any sort of weather will cause them to fade over
9 time. The material that they're on might. It depends on sort
10 of the situation that they're left in.

11 Q. So you get a better fingerprint if it's left like short --
12 a few minutes before the lift is taken, right?

13 A. Not necessarily. But, yes, the fresher the fingerprint
14 is, I'm sure the better the quality would be.

15 Q. Thank you, sir.

16 MR. MacKINLAY: No further questions.

17 THE COURT: Did you say no further? Or there are
18 further?

19 MR. MacKINLAY: No further questions.

20 THE COURT: You are excused. Thank you.

21 THE WITNESS: Thank you so much.

22 MR. MacKINLAY: One moment, please, Your Honor.

23 (Pause.)

24 MR. MacKINLAY: Thank you, Your Honor. The government
25 calls Scott Gamble.

1 THE CLERK: Will you please raise your right hand.
2 (Witness sworn.)

3 THE WITNESS: I do.

4 THE CLERK: Thank you. You can be seated.
5 Can you please state your name and spell your last
6 name for the record.

7 THE WITNESS: First name is Scott. Last name is
8 Gamble, G-a-m-b-l-e.

9 SCOTT GAMBLE, having been duly sworn by the Clerk, was
10 examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. MacKINLAY:

13 Q. Where do you work, sir?

14 A. With the Plymouth County Correctional Facility in
15 Plymouth, Massachusetts.

16 Q. How long have you worked there?

17 A. I've worked there since 2007.

18 Q. What is your position?

19 A. I'm a booking officer. I've been in that position -- in
20 my 11th year.

21 Q. What do you do as a booking officer at the Plymouth County
22 Correctional Facility, Sheriff's Department?

23 A. We book in new arrests from the police departments,
24 new -- people that come back from court that are sent to us.

25 Q. And have you conducted bookings in the booking department

1 of the Sheriff's Department in your 11 years in the department?

2 A. Yes.

3 Q. How many times?

4 A. We get -- sometimes we get immigration inmates. We can
5 get 100 guys in a day. So I have no idea the amount of people
6 that we get.

7 Q. A lot?

8 A. A lot.

9 Q. Can you describe to the jury generally the procedure used
10 at the facility to book someone in.

11 A. When somebody arrives at our facility, they come into a
12 sally port. If it's a court arrest, we have a court docket.
13 We match up the person with the docket sheet with their name,
14 their social security number, their date of birth. We verify
15 that with them.

16 Then they are brought into the facility. That
17 paperwork is put into the computer with their charges, the
18 docket number, the person's name, date of birth, social
19 security number. We pat them down. They are stripped
20 searched. They are sent through a body scanner. They're
21 called to -- somebody will grab the folder. They are called to
22 a booking station. We ask them demographic questions.

23 Q. Hold on right there for a minute, would you, sir?

24 A. Yes, sir.

25 Q. Let's catch up with you a little bit. The booking

1 questions, tell us about the booking procedure more
2 specifically. Is there a booking officer present?

3 A. Yes.

4 Q. And is there -- the person being booked in is present?

5 A. Correct.

6 Q. And how is the information obtained during the booking
7 procedure to input into the booking sheet?

8 A. The criminal charges are reported based on the court
9 docket sheet that we get. The information that we put in as
10 far as demographic is based on an interview conducted with the
11 individual.

12 Q. Who asks the questions?

13 A. The booking officer will ask the questions.

14 Q. Who gives the answers?

15 A. The defendant.

16 Q. What's the process for inputting the answers into the
17 system?

18 A. We enter them into a computer database.

19 Q. How does -- it populate sections on the computer system?

20 A. Yes. There's, like, queues you go through. And you
21 basically fill out a questionnaire, would be the simplest terms
22 to put it, and we can print that out into a booking sheet.

23 Q. Okay. And the information, is it accurate as it's being
24 input from the person being booked into the system?

25 A. Correct.

1 Q. Is there checks on the accuracy of the information during
2 the process, as well?

3 A. It's run through -- we run through CJIS after we've input
4 the information, like when we do the fingerprints, if that's
5 what you're asking.

6 Q. Is the information received accurate when it's entered
7 into the system?

8 A. Correct.

9 Q. And does the booking sheet contain biographic background,
10 demographic-type information?

11 A. Correct.

12 Q. What is the next step in the process generally in the
13 booking?

14 A. After we conduct the interview, we photograph the
15 individual. So we do a photo array. So we do a front-facing
16 head shot, a right profile, left profile. And then we
17 photograph any tattoos, scars, or marks.

18 Q. After the photographs are taken, what's the next stop?

19 A. There's an iris scan that we do. So the demographic
20 information that we've already put in gets large scanned of the
21 photographs. It's also large scanned to an iris scan system.
22 So all their information, their name, all that is on the
23 screen.

24 We have them walk forward. They look into -- they
25 look into -- it looks almost like binoculars. It takes a

1 photograph of their irises, and that's matched up to the
2 person.

3 After that process, we do the fingerprints.

4 Q. Tell us about the fingerprint procedure.

5 A. The information in the computer gets large scanned over to
6 a fingerprint machine. So the person fingerprinting will look
7 into the computer. They will pull the person's name up.
8 They'll call the person over. They'll verify their name and
9 the picture that shows up on the screen. This is Joe Smith.
10 "This is your picture? This is you? Okay." We do a tenprint
11 card, and we print the card out for the --

12 Q. So you do the tenprint card. Can you describe that in a
13 little more detail.

14 A. So we do thumbprints. We roll the thumbs. Four finger
15 slap. Roll all the fingers. And we do a top part of your palm
16 fingerprint, a lower part of the palm print, and a side of the
17 palm print.

18 Q. Now, those aren't done with ink anymore, are they, sir?

19 A. No. It's in the computer system. It's automated. It
20 looks like a flat -- almost a flat computer screen or an iPad
21 screen that you roll them on.

22 Q. Does that populate into --

23 A. It populates into the computer system.

24 Q. Now, the top of the computer system for the tenprint card,
25 does it include a section for identification information --

1 A. Correct.

2 Q. -- who the person is?

3 A. Correct.

4 Q. You mentioned that's populated from booking; is that true?

5 A. That's true.

6 Q. Following the fingerprint procedure, is the person then
7 assigned a unit and essentially booked into the facility?

8 A. Yes. The next step is we give -- we print out an ID card.
9 They see a nurse from the medical department. Once they're
10 cleared through the nurse, they stop at property.

11 And they go to a housing unit based on the questions
12 they answered when we interviewed them, whether they need to be
13 in segregated housing, they are requesting protective custody,
14 or they can go in just the general population.

15 MR. MacKINLAY: Could I have Exhibit 95.1 for the
16 witness only, please. 95.1.

17 BY MR. MacKINLAY:

18 Q. I am showing you an item. It appears on your screen. Two
19 pages. I ask you if you recognize it?

20 A. Yes. It's a booking report.

21 Q. Is this a booking sheet that is from the Plymouth County
22 Correctional Facility?

23 A. Yes, sir.

24 Q. And is it regarding an individual named Darius Carter?

25 A. It is.

1 Q. And was this prepared in the same manner that you have
2 described with the input of information during the booking
3 procedure?

4 A. Yes, sir.

5 Q. Is the information made and kept in the ordinary course of
6 business by the facility?

7 A. Yes, it is.

8 Q. Is it, again, made -- is it accurate when it was input
9 into the system?

10 A. Yes, sir.

11 Q. Made in good faith?

12 A. Yes.

13 MR. MacKINLAY: Your Honor, I would offer into
14 evidence the booking sheet, Exhibit 95.1.

15 MR. SULTAN: No objection.

16 THE COURT: Admitted.

17 (Government Exhibit 95.1 received in evidence.)

18 MR. MacKINLAY: I would request to publish it to the
19 jury at this time, as well.

20 THE COURT: Yes.

21 BY MR. MacKINLAY:

22 Q. Sir, we're going to zoom in and highlight a couple of
23 sections of this, if that's okay? And I'll ask you a few
24 questions about it.

25 A. Sure.

1 Q. First, at the top left, who is the individual that was
2 booked on this particular day?

3 A. Darius Marquis Carter.

4 Q. Does it provide an address?

5 A. It does.

6 Q. What address did he provide?

7 A. 19 Elmhurst Street, Boston, Mass.

8 Q. And the phone number was provided, as well?

9 A. Correct.

10 Q. Next I want to go down to the personal information, the
11 height, weight description. Do you see that personal
12 information?

13 A. I do.

14 Q. Can you just read for the jury what's depicted in that
15 section of the personal information.

16 A. Personal information: Sex, male; black hair; brown eyes;
17 height, 5'11"; weight, 200 pounds; race is listed as black;
18 ethnicity, African.

19 MR. MacKINLAY: One moment, please.

20 (Pause.)

21 BY MR. MacKINLAY:

22 Q. Relative to that booking, was there a date that that
23 booking took place, sir?

24 A. Yes.

25 Q. What date was that?

1 A. The screen is a little fuzzy. I can't really...

2 Q. We'll blow it up and make it a little bit easier for you.
3 Commit date?

4 A. Commit date, 1/28 of 2019.

5 Q. Now, as a part of this booking of Darius Carter, were
6 photographs also taken in the usual course?

7 A. Yes.

8 MR. MacKINLAY: Could I have Exhibits 96.1 to 4 for
9 the witness only, please.

10 BY MR. MacKINLAY:

11 Q. I will scroll through these and see if you recognize
12 these.

13 A. Yes.

14 Q. What do you recognize them to be?

15 A. Photographs of Darius's tattoos.

16 Q. Are these photographs, again, part of -- taken as a part
17 of the booking procedure of that individual on that day?

18 A. Correct.

19 MR. MacKINLAY: I would offer them into evidence, as
20 well, Your Honor.

21 MR. SULTAN: No objection.

22 THE COURT: Did you say objection or no objection?

23 MR. SULTAN: No objection.

24 THE COURT: Admitted.

25 (Government Exhibits 96.1 through 96.4 received in

1 evidence.)

2 BY MR. MacKINLAY:

3 Q. With respect to 96.4, tell us what you observed in the
4 area of the top left of his shoulder.

5 A. Besides the tattoo, there appears to be an injury or a
6 wound, two different spots on his shoulder.

7 Q. You mentioned medical. When would an individual with a
8 wound see medical?

9 A. They would see medical as soon as the booking process is
10 over unless, for some reason, they need to see medical as soon
11 as they come in the door. We assess them at the door when we
12 are verifying their name and information. Obviously, if
13 somebody is in need of immediate care, medical would trump the
14 booking process. They would see him immediately. But in
15 standard procedure, they would see them after we completed the
16 fingerprints and given an ID card.

17 Q. Thank you.

18 Was -- did you look at any additional materials
19 regarding other individuals booked on or about that same time?

20 A. Yes, sir.

21 MR. MacKINLAY: Can I have Exhibit 52 for the witness
22 only, please.

23 BY MR. MacKINLAY:

24 Q. I show you the first page and the second page, as well.
25 Again, do you recognize this document?

1 A. Yes, sir.

2 Q. What do you recognize this document to be?

3 A. It's a Plymouth County Correctional Facility inmate
4 summary or inmate booking report.

5 Q. And, again, was this also created in the same way you've
6 described?

7 A. Yes, sir.

8 MR. MacKINLAY: I would offer Exhibit 52 into
9 evidence, please, Your Honor.

10 MR. SULTAN: No objection.

11 THE COURT: Admitted.

12 (Government Exhibit 52 received in evidence.)

13 BY MR. MacKINLAY:

14 Q. I want to ask you a question before we actually turn to
15 it. Where does alias information come from?

16 A. Alias information is usually provided to us.

17 Q. Okay. So it does not come from the individual itself?

18 A. No.

19 Q. How does the information come to you?

20 A. Oftentimes it's -- when somebody comes in the facility and
21 we book them, they run an intake report. So when they are on
22 the intake report, they run through the CJIS system, and
23 anything that shows up on the Board of Probation, any alias
24 information will be provided to us.

25 Q. You are not getting it from the individual. You are

1 getting it from other means?

2 A. No, correct.

3 Q. I direct your attention to a couple of sections on this.
4 First, the name on the top left-hand corner, can you please
5 provide that to the jury?

6 A. Stephan Rosser-Stewart.

7 Q. Address, please?

8 A. 5 Page Street, Apartment 2, Dorchester, Mass.

9 Q. And, first of all, the personal information?

10 A. Sex, male; hair, black; eyes, brown; 5'7"; weight, 150;
11 race, black; and ethnicity is blank.

12 Q. Who would have provided this information, by the way, on
13 this section?

14 A. Who provides it?

15 Q. Yes.

16 A. The individual we're booking in.

17 Q. Lastly, the commit date and arrest date?

18 A. The commitment date was 1/28, and the arrest date was 1/28
19 of 2019.

20 Q. You looked at a third group of materials relative to a
21 booking conducted at your facility?

22 A. That's correct.

23 Q. And regarding a Diovanni Carter?

24 A. That's correct.

25 MR. MacKINLAY: Start with Exhibit --

1 MR. SULTAN: Can we approach on this one, Your Honor?

2 THE COURT: You didn't give an exhibit number.

3 MR. MacKINLAY: Excuse me?

4 THE COURT: I don't think you gave an exhibit number
5 just now.

6 MR. MacKINLAY: 94.1.

7 THE COURT: 94.1.

8 MR. MacKINLAY: I'm sorry, Your Honor.

9 THE COURT: That's okay. And?

10 MR. SULTAN: Well, I can wait for him to offer it,
11 Your Honor, but I really am -- I want to anticipate the
12 testimony so I suggest I see the Court briefly at sidebar, if
13 the Court will see us.

14 THE COURT: All right.

15 (At sidebar.)

16 MR. SULTAN: Your Honor, I have no problem with Page
17 1. My problem is the same problem with Page 2.

18 MR. MacKINLAY: The only thing I would say about that,
19 Your Honor -- that's fine because I stand corrected that it
20 didn't come from him, and so we can agree that that can come
21 out. I do intend to offer a photograph --

22 MR. SULTAN: That's fine.

23 MR. MacKINLAY: -- from a different source.

24 THE COURT: Yes.

25 (End of sidebar.)

1 MR. MacKINLAY: Can I have the document camera,
2 please, for the witness only.

3 BY MR. MacKINLAY:

4 Q. I am showing you a sheet that we've marked as Exhibit
5 94.1. Do you recognize that?

6 A. I do.

7 Q. What do you recognize that to be?

8 A. Plymouth County Correctional Facility inmate summary or
9 booking report.

10 Q. Is that also created in a way that you described earlier
11 with the other booking materials?

12 A. Absolutely.

13 MR. MacKINLAY: I would offer 94.1 into evidence,
14 please, Your Honor.

15 MR. SULTAN: No objection based on our discussion at
16 sidebar, Your Honor.

17 THE COURT: Admitted.

18 (Government Exhibit 94.1 received in evidence.)

19 BY MR. MacKINLAY:

20 Q. I am going to zoom in on a couple of sections, if I could,
21 sir.

22 A. Sure.

23 Q. The name of the person and address in the top left-hand
24 corner?

25 A. It is.

1 Q. Please read it.

2 A. Diovanni Maurice Carter.

3 Q. At the bottom, is there a section for the personal
4 information?

5 A. There is.

6 Q. Please read that.

7 A. Personal information: Sex, male; hair, black; eyes,
8 brown; height, 6 feet; weight, 194; race, black; and then
9 ethnicity is blank.

10 Q. Is there a section marked "Scars, Marks, Tattoos"?

11 A. There is.

12 Q. Read that, please.

13 A. Scars, marks and tattoos: Tattoos, the first one is
14 Trouble. Mob with a bird. M-o-b with a bird, and then there's
15 a skull.

16 MR. MacKINLAY: May I please have 94.3 to 6 for the
17 witness only.

18 BY MR. MacKINLAY:

19 Q. I am showing you a group of items, and I'm going to scroll
20 through them and see if you recognize what I've shown you. Do
21 you recognize the photographs that --

22 A. I do.

23 Q. What do you recognize them to be?

24 A. Photographs of Diovanni.

25 Q. Were those photographs taken during the course of the

1 booking procedure and, in particular, the tattoos in the area
2 of the hands?

3 A. Yes.

4 MR. MacKINLAY: I would offer them into evidence,
5 please, Your Honor.

6 MR. SULTAN: No objection.

7 THE COURT: They're admitted.

8 (Government Exhibits 94.3 through 94.6 received in
9 evidence.)

10 MR. MacKINLAY: I request to publish them to the jury
11 at this time, Your Honor.

12 THE COURT: Yes, that's fine.

13 MR. MacKINLAY: 94.3, again, 94.4, and 94.5, 94.6.

14 Thank you. May I have the document camera again,
15 please, for the witness only.

16 BY MR. MacKINLAY:

17 Q. I want to show you a group of photographs, Officer, that
18 we have marked as 94.7. Do you recognize them?

19 A. I do.

20 Q. What do you recognize them to be?

21 A. A photo array of tattoos of Diovanni Maurice Carter.

22 Q. In particular, is this one on the left different or new,
23 additional?

24 A. It is.

25 Q. Again, are these photographs part of the same booking

1 photographing procedure utilized for Diovanni Carter?

2 A. Yes, those are the same.

3 Q. And does the date at the top appear to be the date that
4 they were taken?

5 A. Correct.

6 MR. MacKINLAY: I would offer them into evidence,
7 please, and request to publish them to the jury at this time.

8 MR. SULTAN: No objection.

9 THE COURT: Admitted. It can be published.

10 (Government Exhibit 94.7 received in evidence.)

11 BY MR. MacKINLAY:

12 Q. I want to zoom in on one of them, sir. Do you see that
13 Photograph 1 of the tattoos of Mr. Diovanni Carter?

14 A. Yes, sir.

15 Q. And can you indicate what it appears to say?

16 A. It appears to say "Trouble." Just as a side note --

17 MR. SULTAN: No side notes, Your Honor. Thank you.

18 THE COURT: He'll ask you.

19 THE WITNESS: That's fine.

20 BY MR. MacKINLAY:

21 Q. Now, you also discussed the booking fingerprinting
22 procedure; is that true?

23 A. Yes.

24 Q. And by that, I mean the taking of tenprint card
25 information relative to individuals who are booked, true?

1 A. Correct.

2 Q. I am showing you an item we marked previously as Exhibit
3 44. I ask you to take a moment and look at that. I am going
4 to zoom in at the top here the best I can. Do you recognize
5 this item?

6 A. I do.

7 Q. What do you recognize this to be?

8 A. It's a fingerprint card that we would produce at the jail.

9 Q. Is it a tenprint card of Diovanni Carter?

10 A. It is.

11 Q. Does it indicate the date that this was taken, the
12 approximate date?

13 A. I believe it does to the left side. It has a date of
14 arrest on it, which gets entered in for a fingerprint card.
15 The date of booking -- the date of arrest, it appears he was
16 arrested the day before he was booked in our facility. So he
17 would have been arrested out at the police station, gone to
18 court, come in the next day, and then fingerprinted.

19 The date on the booking sheet indicates the 6th. But
20 the date of arrest is what they want on the fingerprint cards,
21 and that's why it has the 5th.

22 Q. Was this record taken in the same way you described in the
23 booking process involving Diovanni Carter on or about that date
24 or a few days later than March 5th, 2019?

25 A. It was.

1 MR. MacKINLAY: No further questions, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. SULTAN:

4 Q. Good morning, sir. Is it Deputy Gamble?

5 A. It's Officer Gamble. That's fine.

6 Q. Good morning, Officer Gamble.

7 A. Good morning.

8 Q. So let me -- a few minutes ago you testified about booking
9 sheets for various people who came in your facility, right?

10 A. Correct.

11 Q. And one of those individuals was named Darius Carter,
12 right?

13 A. Correct.

14 MR. SULTAN: Could I have 95.1, please. And with the
15 Court's permission, may we publish that to the jury, as well?
16 It's in evidence.

17 BY MR. SULTAN:

18 Q. That's the booking sheet for Darius Carter?

19 THE COURT: Yes.

20 MR. SULTAN: I'm sorry.

21 THE COURT: I just wanted to make sure it was in
22 evidence.

23 A. Yes, sir.

24 BY MR. SULTAN:

25 Q. That's the booking sheet for Darius Carter?

1 A. Yes, sir.

2 MR. SULTAN: Could you zoom in on the family
3 information section, please. Move it over a little bit to the
4 right so we can see it. Thank you.

5 BY MR. SULTAN:

6 Q. So this is information that's contained on the booking
7 sheet as a matter of standard practice, right?

8 A. Correct.

9 Q. Okay. So who is Darius Carter's mother, please?

10 A. It says "Lori Major."

11 Q. And who is Darius Carter's father?

12 A. Craig Carter.

13 MR. SULTAN: Okay. Now, could I have 94.1, please.
14 And could this be shown to the jury, Your Honor, as well?

15 THE COURT: Yes.

16 MR. SULTAN: Would you zoom in on the family
17 information, please, again.

18 BY MR. SULTAN:

19 Q. Who is Diovanni Carter's mother?

20 A. Lori Major.

21 Q. Who is Diovanni Carter's father?

22 A. Craig Carter.

23 Q. Same mother, same father?

24 A. From the first sheet? I wasn't comparing the two, but I
25 remember Craig Carter. I'm not sure if the mother was a

1 different last name.

2 Q. Okay. Now, with respect to tattoos, you've been booking
3 people for a long time to your facility?

4 A. Yes.

5 Q. Thousands of people. Tattoos are pretty popular these
6 days?

7 A. Unfortunately, yes.

8 Q. You see thousands of people and thousands of tattoos,
9 right?

10 A. Correct.

11 Q. People have all kinds of tattoos?

12 A. Yes.

13 Q. Different words that may be important to them?

14 A. Correct.

15 Q. Different names that may be important to them?

16 A. Correct.

17 Q. Pictures, right?

18 A. Yes.

19 Q. Symbols, right?

20 A. Right.

21 Q. All kinds of things, right?

22 A. Correct.

23 MR. SULTAN: Thank you, sir.

24 MR. MacKINLAY: Just a couple of questions, Your
25 Honor.

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REDIRECT EXAMINATION

BY MR. MacKINLAY:

Q. The family information, who provides that?

A. It's provided by the person we're interviewing, the person we're booking.

Q. There's no other investigation concerning that. It's literally from the individual themselves?

A. That's from the individual themselves.

MR. MacKINLAY: Nothing else, Your Honor.

THE COURT: Any cross, Mr. Sultan?

MR. SULTAN: No, Your Honor. Thank you.

THE COURT: You are excused. Thank you.

THE WITNESS: Thank you, ma'am.

MR. MALLARD: The government calls Andy Sousa.

THE CLERK: Please raise your right hand.

(Witness sworn.)

THE WITNESS: Yes, I do.

THE CLERK: Thank you. You can be seated.

Can you please state your name and spell your last name for the record.

THE WITNESS: Andy Sousa, S-o-u-s-a.

ANDY SOUSA, having been duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MALLARD:

1 Q. Good afternoon, sir. I'm sorry. Good morning, sir.

2 Where are you from?

3 A. I'm from Brockton, Massachusetts.

4 Q. And how old are you?

5 A. Twenty-three.

6 Q. And how long have you been in Brockton?

7 A. Fifteen years.

8 Q. What do you do for a living?

9 A. I work at a software company called LogMeIn. I'm an
10 information technology help desk technician.

11 Q. Have you ever been arrested?

12 A. No.

13 Q. Ever been convicted of any crime at all?

14 A. No.

15 Q. I want to draw your attention back to the first week or so
16 in January of 2019, okay? Do you remember that time?

17 A. Yes.

18 Q. Did you ever come in contact with a white Chevy Malibu?

19 A. Yes.

20 Q. Tell us about that.

21 A. I got into the vehicle and went to Wendy's to grab food.

22 Q. What part of the vehicle did you get into?

23 A. The passenger side.

24 Q. And where did you sit?

25 A. The passenger side.

1 Q. The front or the back?

2 A. The front.

3 Q. And how long were you in the car?

4 A. About an hour and a half.

5 Q. Were you involved in an armed robbery on January 26th,
6 2019?

7 A. No.

8 Q. Do you know who Diovanni Carter is?

9 A. No.

10 Q. Do you know who Darius Carter is?

11 A. No.

12 Q. Do you know who Stephan Stewart is?

13 A. No.

14 Q. Do you know who Dennis Martin is?

15 A. No.

16 Q. Do you know who Carshana Graham is?

17 A. No.

18 Q. Do you know who James Boddie is?

19 A. No.

20 Q. Do you know who Terrell Jackson is?

21 A. No.

22 Q. And what was your phone number back then?

23 A. 774-297-9205.

24 MR. MALLARD: No further questions for this witness.

25 MR. SULTAN: Very briefly.

1 CROSS-EXAMINATION

2 BY MR. SULTAN:

3 Q. Good morning, Mr. Sousa. You just told us you've never
4 been arrested, right?

5 A. No.

6 Q. Any idea how your fingerprints got in the hands of the
7 police?

8 A. I was in -- I enlisted into the military when I was 18
9 years old.

10 MR. SULTAN: Thank you, sir. And thank you for your
11 service.

12 THE COURT: Redirect?

13 MR. MALLARD: No. Nothing for this witness, Your
14 Honor.

15 THE COURT: You may be excused.

16 MR. MALLARD: The government calls Cosmos Nanos.

17 THE CLERK: Will you please raise your right hand.
18 (Witness sworn.)

19 THE WITNESS: Yes.

20 THE CLERK: Thank you. You can be seated.

21 Can you please state your name and spell your last
22 name for the record.

23 THE WITNESS: Sure. My name is Cosmos Nanos,
24 N-a-n-o-s.

25 COSMOS NANOS, having been duly sworn by the Clerk, was

1 examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. MALLARD:

4 Q. Good morning, sir.

5 A. Good morning.

6 Q. Tell us where you work.

7 A. I work at the Plymouth County Sheriff's Department.

8 Q. How long have you been there?

9 A. About 19-and-a-half years.

10 Q. What's your current assignment?

11 A. I am the lieutenant of the inner perimeter security team.

12 Q. What's that?

13 A. That is a division of the sheriff's department where we
14 conduct investigations, staff investigations, narcotics
15 investigations, assaults. We are also the keepers of the
16 records for phone calls and video.

17 Q. And that's how you're appearing today, as well, as a
18 keeper of the records for some records kept by the IPS
19 department of Plymouth County; is that fair to say?

20 A. Yes.

21 Q. Now, you talk about phone calls. What type of phones are
22 you talking about? What kind of phones are kept by the
23 facility?

24 A. Basically inmate phones, inmate calls that are made. Each
25 inmate that comes in is assigned a unique identification

1 number. No matter how many times they come into the facility,
2 they have that same number. And they use that PIN number also
3 to access their phones and make phone calls with.

4 Q. Is it also tied to sort of a balance system and cash that
5 they can keep at the facility?

6 A. Yes. They can -- they can make calls, and it can be
7 deducted from their balance or the people that they are calling
8 can set up accounts from the outside of the facility.

9 Q. Are those calls monitored?

10 A. Yes, they are.

11 Q. Are they recorded?

12 A. Yes, they are.

13 Q. How are they recorded?

14 A. They're recorded by a secured server, which is accessed by
15 the members of our team, which is limited to about seven
16 people, and that is also kept in a secure location.

17 Q. Now, you talked about a PIN list, but does a person have
18 to do anything else to get certain numbers approved to make
19 calls?

20 A. Inmates are given a list, and they can add up to ten
21 people on that list. They provide names, phone numbers, and
22 relationships of those people. Those get turned in and then
23 are verified by our phone administrator.

24 Q. So there's only a certain universe of phone numbers that
25 can be called by a certain PIN; is that correct?

1 A. Correct.

2 Q. And where do those phone numbers come from that you put
3 into the list of accessible phone numbers?

4 A. Those are generated by the inmate.

5 Q. And do you keep the copies of the lists that the inmates
6 provide for you for the purposes of generating those accessible
7 call lists?

8 A. Yes.

9 Q. I'm showing -- and you keep those in the usual course of
10 business?

11 A. Yes.

12 Q. Do you regularly -- and do you record them and keep them
13 as soon as they are made and provided to you by the inmates?

14 A. Correct.

15 Q. Are they kept accurately in your system?

16 A. Yes.

17 Q. Do you keep them in good faith?

18 A. Yes.

19 MR. MALLARD: If I could have the witness for the --
20 the screen for the witness, Madam Clerk. If I could have
21 Exhibit Number 94.2.

22 BY MR. MALLARD:

23 Q. Sir, do you know what this document is?

24 A. Yes. That is inmate Diovanni Carter's phone list.

25 Q. And where would this information have come from?

1 A. Come from the inmate.

2 Q. And it looks like it's typed in this version. How does it
3 get typed?

4 A. A phone administrator gets the handwritten form that the
5 inmate fills out, and then he inputs it into the computer
6 system.

7 Q. Is there a second page to that document that I'm showing
8 you now?

9 A. Yes. That is the handwritten list.

10 Q. Okay. And is -- are these two documents the documents
11 that we discussed?

12 A. They are.

13 Q. And are these accurate copies of the documents for
14 Diovanni Carter that were kept and maintained by the county
15 system?

16 A. Yes.

17 Q. And do you see a date on when the handwritten document was
18 submitted to the system on the second page there on the bottom
19 right?

20 A. That is March 7th, 2019.

21 Q. It would have been signed by the inmate, as well?

22 A. Correct.

23 MR. MALLARD: Your Honor, I'd offer this document as
24 the next exhibit.

25 MR. SULTAN: No objection.

1 THE COURT: It's admitted.

2 (Government Exhibit 94.2 received in evidence.)

3 BY MR. MALLARD:

4 Q. If we could turn to the first page. Let's just look at a
5 couple of phone numbers here, if we could.

6 MR. MALLARD: Can we zoom in on the first three
7 columns, please.

8 BY MR. MALLARD:

9 Q. I draw your attention down to the entry --

10 MR. MALLARD: Well, if I could get the actual
11 "Relationship" column, as well, to be zoomed in. I'm sorry.

12 BY MR. MALLARD:

13 Q. If we could look at the first entry -- first named entry
14 there. Do you see that?

15 A. Yes. Miss Nancy Carter.

16 Q. That's a phone number ending in 8445?

17 A. Yes.

18 Q. What's the relationship listed there for that entry?

19 A. Grandmother.

20 Q. Where would that information about the relationship have
21 come from?

22 A. That would come from the inmate.

23 Q. Now, jumping down to the entry ending in 1312, do you see
24 that there?

25 A. I do.

1 Q. What is that entry?

2 A. That is Lori Major.

3 Q. And it's 617-704-1312?

4 A. Yes.

5 Q. And the relationship for this entry?

6 A. That is the inmate's mother.

7 Q. Okay. And then the entry right below that?

8 A. That is Shaatrona Sims, and it's listed as the inmate's
9 fiancée.

10 MR. MALLARD: If I could go back to the witness screen
11 for just the witness, Madam Clerk. If I could show Exhibit
12 95.2.

13 BY MR. MALLARD:

14 Q. What are we looking at here?

15 A. That is Darius Carter's phone list.

16 Q. Okay. And looking at the first and second page, are these
17 similar to the lists that we just discussed before?

18 A. They are.

19 Q. And what day did these -- what day was the handwritten
20 list completed by Darius Carter?

21 A. It looks like February 11th, 2019.

22 Q. Are these accurate copies of the records maintained by the
23 Plymouth County Correctional Facility for Darius Carter, much
24 in the same manner as in the prior exhibit for Diovanni Carter?

25 A. They are.

1 MR. MacKINLAY: Your Honor, I would move this in as
2 the next exhibit.

3 MR. SULTAN: No objection.

4 THE COURT: Admitted.

5 (Government Exhibit 95.2 received in evidence.)

6 MR. MALLARD: If we could turn to the first page and
7 publish to the jury, please.

8 BY MR. MALLARD:

9 Q. If you could focus down to the entry ending in 1312.

10 A. Yes. Ms. Lori Major.

11 Q. It appears to be the same entry as before?

12 A. Correct.

13 Q. The same relationship?

14 A. Yes.

15 Q. Let's go down to one entry below that. Do you see that
16 entry there?

17 A. Yes. Tyrell Murphy.

18 Q. And that's ending in a 4053?

19 A. Yes.

20 Q. What's the relationship on that?

21 A. Cousin.

22 MR. MALLARD: Okay. Now, if I could clear the screen,
23 please.

24 BY MR. MALLARD:

25 Q. Now, you talked a little bit about the phone system now.

1 Those lists that we just discussed are the only permissible
2 phone numbers that can be dialed for a certain PIN; is that
3 right?

4 A. That is correct.

5 Q. So, for example, on the Darius Carter list, only those
6 numbers that are listed there could be called through Darius
7 Carter's PIN; is that right?

8 A. That is correct.

9 Q. And the calls that are made are recorded and monitored
10 during the course of the time that they are made?

11 A. They are.

12 Q. Is there an advisement about that at the beginning?

13 A. Yes. There is a recording before every call.

14 MR. MALLARD: And, if I may approach, Your Honor?

15 THE COURT: Yes.

16 MR. MALLARD: Exhibit 97.

17 BY MR. MALLARD:

18 Q. Sir, I'm showing you a compact disc. Do you know what
19 this is?

20 A. Yes. That is a disc of a call that Mr. Darius Carter
21 made.

22 Q. Is this call sort of excerpted down to just a small
23 portion of the call?

24 A. It is.

25 Q. And what call is that?

1 A. This is call number 33.

2 Q. And do you know the date in which the call was made?

3 A. It was made on March 5th, 2019.

4 Q. And do you know to whom the call was made?

5 A. I believe it was to Ms. Lori Major.

6 Q. And do you see an indication of the phone number that it
7 was called to on the disc there?

8 A. Yes. Ending in 1312.

9 Q. And have you had a chance to review the contents of the
10 call?

11 A. I have.

12 Q. And do you know who's speaking on the call?

13 A. It sounds to me like --

14 MR. SULTAN: I object, Your Honor.

15 THE COURT: Sustained.

16 BY MR. MALLARD:

17 Q. In the course of your work in the IPS department, have you
18 had a chance to listen to calls made by Darius Carter that have
19 been recorded variously besides just this call?

20 A. I have.

21 Q. And have you had a chance to listen to calls made to
22 various numbers by the same PIN number associated with Darius
23 Carter?

24 A. Yes.

25 Q. Have you become familiar with his voice based upon that

1 activity?

2 A. Yes. I've listened to several calls, and it does sound as
3 though the same person is making these calls from this unique
4 PIN that belongs to Mr. Carter.

5 Q. And this particular excerpt here that we're talking about,
6 based upon your experience listening to calls made by Darius
7 Carter, do you have an opinion as to whose voice it is on the
8 call?

9 A. In my opinion, I do believe that it is Mr. Darius Carter.

10 MR. MALLARD: Your Honor, I'd ask that Exhibit Number
11 97 be marked in evidence. It conforms with the Court's order
12 on this issue.

13 MR. SULTAN: The Court has already ruled on this, so I
14 have nothing to say, Your Honor, at this point.

15 THE COURT: Okay.

16 (Government Exhibit 97 received in evidence.)

17 MR. MALLARD: If we could, I have transcripts that I
18 could pass out to the jury quickly.

19 THE COURT: That's fine. I just remind the jury that
20 the transcripts are not evidence. They are just an aid.

21 Did you want her to pass them out to the jury?

22 MR. MALLARD: That was my intent.

23 I think everyone has their copy. If we could proceed
24 to play the call. I just want to make sure the sound is right.

25 (Audio playing.)

1 BY MR. MALLARD:

2 Q. Is this the initial portions that happened during the
3 course of the call?

4 A. Yes.

5 Q. That signifies it's being recorded by the system?

6 A. Correct.

7 (Audio playing.)

8 MR. MALLARD: Pause it right there.

9 BY MR. MALLARD:

10 Q. Now, that's the portion that precedes pretty much all the
11 calls; is that right?

12 A. Yes.

13 Q. In this excerpt, portions have been removed and redacted
14 out; is that fair to say?

15 A. Yes.

16 MR. MALLARD: Please continue.

17 (Audio playing.)

18 MR. MALLARD: I'll collect the transcripts, Madam
19 Clerk. We're all set.

20 I have no further questions for the witness.

21 MR. SULTAN: No questions, Your Honor.

22 THE COURT: You're excused. Thank you.

23 THE WITNESS: Thank you.

24 MR. MALLARD: The government calls Monica Horan.

25 THE CLERK: Can you please just raise your right hand.

1 (Witness sworn.)

2 THE WITNESS: I do.

3 THE CLERK: Thank you. You can be seated.

4 Can you please just state your name and spell your
5 last name for the record.

6 THE WITNESS: Monica Horan, H-o-r-a-n.

7 MONICA HORAN, having been duly sworn by the Clerk, was
8 examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. MALLARD:

11 Q. Good morning, ma'am. Hi. How are you?

12 A. Good.

13 Q. Tell us a little bit about your background. Where are you
14 from?

15 A. I'm an owner of Express Employment Professionals, a
16 full-service staffing agency located in Braintree.

17 Q. What's a full-service staffing agency?

18 A. We are paid by companies to find individuals to work for
19 them, either on a temporary or permanent basis, and we help
20 people that are looking for work. They can utilize our
21 services, but they never pay a fee.

22 Q. You said a full service and temporary. What's the
23 difference between full service and temporary?

24 A. We place people in permanent positions where a company
25 hires them on and just pays us a fee for that service of

1 locating that person, or we also place people on a temporary
2 basis where clients hire us to recruit workers for them. We
3 are the employer of record, so we take care of all wage and
4 hour compliance. We pay the individual, but they work on an
5 assignment at a client's location.

6 Q. So Express Employment Professionals, is that sort of a
7 single entity? Multiple entities? What's the corporate
8 structure there?

9 A. We're a franchise of Express Services. They're a
10 35-year-old company with approximately 800 offices in four
11 countries.

12 Q. And they don't have anything to do with selling cellular
13 phones, right?

14 A. No, nothing.

15 Q. They just also have the name "Express." It's just called
16 Express Services?

17 A. Express Services, Inc., that's the corporate name. And
18 then Express Employment Professionals is the name that the
19 individual offices use because all the offices are
20 independently owned and operated.

21 Q. And you own the one that you mentioned in Braintree?

22 A. Correct.

23 Q. What's the main phone number for that branch?

24 A. 781-848-2324.

25 Q. How long has that been the number?

1 A. Over ten years.

2 Q. How many employees do you have working for your actual
3 company?

4 A. I have three people that work in my office.

5 Q. And is Jacqueline Muh one of them?

6 A. She was. She left our employment December 1, 2019. But
7 she had worked there for approximately four years.

8 Q. How long have you owned the place?

9 A. I've owned it for over ten, since October 2009.

10 Q. So how does one become an employee or -- not an employee
11 of Express Employment, but, I guess, a customer or client of
12 your entity?

13 A. We call them associates. So people that are looking for
14 work will contact us by phone or e-mail, and typically they
15 fill out an application either on paper or online. They go
16 through our process of being interviewed, reference checked.
17 We E-Verify to ensure that they're legally able to work in the
18 U.S., and then we help them find a job.

19 Q. So they provide you with a good amount of information to
20 start with?

21 A. Oh, yes.

22 Q. What do you do with that information when you receive it?

23 A. All the information is contained in a database that is
24 called Q4. We use that system actually to store all the
25 associate information that we get, so all of the people that

1 are looking for work that have been through our process. And
2 we also use it to store client information and information to
3 the various jobs that we are filling for clients.

4 Q. So it's basically a large database that your company uses?

5 A. Yes.

6 Q. Does the database accurately store information?

7 A. Yes.

8 Q. And how often do you query the database in the course of
9 your business?

10 A. Every minute. It's the lifeblood of our business. It's
11 the only system that we use to track every activity that we do.

12 Q. What type of contact info do you keep for your associates?

13 A. So we capture information from the application. So we
14 have names, addresses, telephone numbers, e-mail addresses.
15 You know, any type of contact information. Work history. If
16 they've done any testing of any sort, we keep the results of
17 that.

18 Q. Let me ask you this, too: What if someone updates their
19 phone number or updates their e-mail?

20 A. So any time someone contacts us, we make a record in the
21 database that includes the date that we were contacted and what
22 information was provided to us, and that could be from a phone
23 call, an e-mail, a text. So if someone changes their basic
24 information, they notify us. Or if it's someone we hadn't
25 heard from in a while, we'll ask them, "Did any of your

1 information change? Because we want to make sure that we have
2 accurate contact information."

3 Q. When you get that new information, do you immediately put
4 it into the system?

5 A. Immediately, yes.

6 Q. That's sort of your practice, to quickly put the stuff
7 into the Q4 system once you receive it?

8 A. Exactly.

9 Q. I want to draw your attention to an individual named
10 Diovanni Carter, okay? Are you familiar with that individual?

11 A. I'm familiar with his record, you know, in our system, and
12 that he is an associate of Express Employment.

13 Q. As part of your appearance today, did you produce some
14 documents that pertain to his application and work with your
15 company?

16 A. Yes.

17 MR. MALLARD: If I could have for the witness, Madam
18 Clerk, Exhibit Number 82.

19 BY MR. MALLARD:

20 Q. If we could just page through each one of these pages a
21 little bit slowly here, and I ask you to just take a look at
22 these documents and let us know if you're familiar with them.

23 A. Yes, I'm familiar with all those documents.

24 Q. Are those the documents that Express Employment
25 Professionals kept and maintained with respect to Diovanni

1 Carter's work with the company?

2 A. Yes.

3 Q. And the records that they reflect, are they kept -- are
4 they made or kept at or near the time for information that's
5 received by your company?

6 A. Yes.

7 Q. Are they kept in the regular course of your business?

8 A. Yes.

9 Q. And is making these records and keeping them a regular
10 practice of your business?

11 A. Yes.

12 MR. MALLARD: Your Honor, I'd ask these be admitted as
13 the next exhibit.

14 MR. SULTAN: No objection.

15 THE COURT: Admitted.

16 (Government Exhibit 82 received in evidence.)

17 MR. MALLARD: Let's go to the first page. If I could
18 have it for the jury, as well.

19 Q. Looking at the first page here, what is this?

20 A. This was a handwritten application for employment by
21 Diovanni Maurice Carter dated August 13th, 2015.

22 Q. Is that the date on which he became an employee or an
23 associate, so to speak?

24 A. Yes. Either on that date or very shortly thereafter, he
25 would have been interviewed by one of my staff.

1 Q. Okay. Let's fast-forward to Page 11, if we could. Do you
2 know what's on this page?

3 A. This is a report that is generated out of the system that
4 produces all -- it basically prints out all the data that is in
5 our system. So this page indicates that, you know, he has a
6 high school diploma. It provides his street address, cell
7 phone number, and e-mail address.

8 Q. Okay. And if we could just zoom in on the contact
9 information there, what particular information was provided for
10 an address?

11 A. 108 Moraine Street, Brockton, Massachusetts 02301.

12 Q. What about for a cell phone?

13 A. Cell phone, 617-704-2207.

14 Q. What about for e-mail?

15 A. Diormauricecarter@gmail.com.

16 Q. Does Express Employment Professionals' e-mail with its
17 associates?

18 A. We do.

19 Q. And I want to draw your attention --

20 MR. MALLARD: If I could just have a second, Your
21 Honor?

22 (Pause.)

23 MR. MALLARD: If we go to the -- it looks like
24 the -- I apologize. The fifth page in the document -- sixth
25 page. I'm sorry. And one more. If we could zoom in on the

1 entry for January 21st, 2019.

2 BY MR. MALLARD:

3 Q. You indicated a phone number was entered there ending in
4 2207 for the prior page; is that right?

5 A. Yes.

6 Q. And do you know when that entry was updated in the file,
7 in the system?

8 A. January 21st, 2019.

9 Q. And is that what this entry here and another piece of the
10 record reflects?

11 A. Yes.

12 Q. What happened on January 21, 2019, according to the
13 recordkeeping?

14 A. Another employee of mine, Maggie Giusti, received a call
15 from Mr. Carter indicating that he was available for work. He
16 was checking in to see if we had anything available for him,
17 and he provided an updated phone number.

18 Q. Okay. Was there any further contact with Mr. Carter about
19 work availability?

20 A. There was.

21 Q. What was that?

22 A. Jacki Muh contacted Mr. Carter to let him know that we
23 were currently looking for associates to work at a warehouse in
24 Braintree for one of our clients.

25 MR. MALLARD: If we could zoom in on the entry for

1 January 25th, 2019.

2 BY MR. MALLARD:

3 Q. Is that activity reflected there in that entry?

4 A. Yes. That Jacki Muh had reached out to Mr. Carter and
5 told him about the, you know, the opportunity. "Simpli" in the
6 entry refers to a company called SimpliSafe, and we were
7 recruiting warehouse workers for them in Braintree. And he
8 indicated that he could start work on the following Monday.

9 Q. January 25th was a Friday. What was the following Monday?

10 A. January 28th.

11 Q. If we could turn to Page 4 of the records, please. Do you
12 see what that is there?

13 MR. MALLARD: If we could just highlight on from the
14 top quarter of that -- a little further down, please, down.
15 Right there would be great.

16 BY MR. MALLARD:

17 Q. Do you know what this document is?

18 A. Yes. This is an e-mail from Jacki Muh to Mr. Carter.
19 Every time that we do give an assignment, we like to confirm
20 that someone is going to be able to start on -- and, you know,
21 that they have all the information they needed. So we
22 indicated the name of the company, where it's located, who he
23 was to ask for, and the date and time that he was supposed to
24 be there.

25 Q. Okay.

1 MR. MALLARD: If we could turn back to two pages down
2 the road that we were just back on. Sorry. One more page
3 forward, back. If we could enter into the entry for January
4 25th, the short one.

5 BY MR. MALLARD:

6 Q. What does this entry indicate here on January 25th?

7 A. Typically what we would do is cut and paste any
8 communications that we receive back, and we'd document them in
9 the system. So here is an entry where Jacki received an e-mail
10 that said, "Yes, I've received your e-mail, and I will be there
11 Monday."

12 Q. Okay. What happened on Monday?

13 A. Mr. Carter appeared for work at our client's location in
14 Braintree.

15 Q. And did you ever receive documentation about the amount of
16 hours that were worked that day for purposes of your billing
17 and payment systems?

18 A. Yes, we did.

19 Q. What was that?

20 A. Our client representative sent us the hours that
21 Mr. Carter had worked, and they send us the hours that every
22 associate works every week because we process payroll once a
23 week for all of our temporary associates.

24 Q. How many hours did Mr. Carter work that week according to
25 the records that you received for purposes of your payment?

1 A. Five hours.

2 Q. On what day?

3 A. The 28th.

4 Q. So just that one day?

5 A. Yes.

6 MR. MALLARD: If we could zoom in on the entry on
7 January 28th there.

8 BY MR. MALLARD:

9 Q. What does this entry reflect?

10 A. This represents a phone call that Jacki Muh received from
11 Mr. Carter saying that he was going to end the assignment that
12 day, that he has a lot going on in his life right now and can't
13 work. Will call when he is ready to work again.

14 MR. MALLARD: May I have just one moment, Your Honor?

15 (Pause.)

16 MR. MALLARD: I have no further questions for this
17 witness.

18 CROSS-EXAMINATION

19 BY MR. SULTAN:

20 Q. Good morning, Ms. Horan.

21 A. Good morning.

22 Q. You own your own business?

23 A. I do.

24 Q. Diovanni worked for your company as an associate. He
25 applied in 2015, right?

1 A. Yes.

2 Q. And he went through your company's vetting process, right?

3 A. Yes.

4 Q. And you hired him as a temporary associate, right?

5 A. Yes.

6 Q. Okay. And he was still an associate at your company four
7 years later in 2019, right?

8 A. Correct.

9 Q. Okay. And you told us that he worked -- he reached out
10 looking for whether a position was available, right?

11 A. Yes.

12 Q. And you found a position for him?

13 A. We did.

14 Q. And he reported to work on the morning of Monday, January
15 28th, 2019, right?

16 A. Yes.

17 Q. And he worked five hours that day, right?

18 A. Yes.

19 Q. Okay. And after he worked that day, he called one of your
20 employees and said, "I've got a lot going on, and I'm -- I
21 can't continue with this assignment. I'll call back when I'm
22 ready for another assignment," right?

23 A. Yes.

24 Q. So he gave you notice, right?

25 A. He did, yes.

1 MR. SULTAN: Thank you, ma'am.

2 THE COURT: Redirect?

3 MR. MALLARD: I have nothing for this witness, Your
4 Honor.

5 THE COURT: You're excused. Thank you.

6 MR. MALLARD: The government calls Jacqueline Muh.

7 THE CLERK: Can you please raise your right hand.
8 (Witness sworn.)

9 THE WITNESS: I do.

10 THE CLERK: You can be seated.

11 Will you please state your name and spell your last
12 name for the record.

13 THE WITNESS: Jacqueline Muh, and the last name is
14 M-u-h.

15 JACQUELINE MUH, having been duly sworn by the Clerk,
16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. MALLARD:

19 Q. Good morning, ma'am. How are you?

20 A. Good.

21 Q. Can you tell us about your background. Where you're from?

22 A. I am originally from Weymouth, Massachusetts. I'm
23 currently living in Hingham.

24 Q. What do you do for work?

25 A. I currently am working at a recreation center. But

1 formerly, I was working at Express Employment in Braintree.

2 Q. If you'd do us all a favor and move the microphone and
3 speak right into it.

4 A. Sorry.

5 Q. You said you worked for Express Employment Professionals?

6 A. Yes.

7 Q. For what period of time?

8 A. I was there from May 1st of 2015 to November 1st of 2019.

9 Q. What is that business?

10 A. It's a full-service staffing agency. We help people find
11 jobs and companies find people for their jobs.

12 Q. And you worked directly for the company itself, right?

13 A. Correct.

14 Q. You weren't a person that they were hiring to other
15 companies?

16 A. No.

17 Q. What was your role there? What was your job?

18 A. As a staffing consultant.

19 Q. And what does that mean?

20 A. That I was the person who would bring somebody in,
21 interview them, and then place them out on the jobs.

22 Q. Did Express have any sort of recordkeeping system that you
23 guys would use?

24 A. Yes. We would use Q4. It was an internal system that
25 every office in Express throughout the country would use.

1 Q. Did you become familiar with it?

2 A. Yes.

3 Q. Would you use it?

4 A. Yes.

5 Q. How frequently?

6 A. Daily. It was pretty much that and Outlook were the only
7 things that we had up on our computers all day long.

8 Q. I want to draw your attention to an individual named
9 Diovanni Carter, okay?

10 A. Yes.

11 Q. Are you familiar with that individual?

12 A. Yes.

13 Q. I want to draw your attention back to January 2019, all
14 right?

15 A. Yes.

16 Q. Do you recall some activity with him and your business
17 around that period?

18 A. Yes, I do.

19 Q. Tell us about that.

20 A. He checked in for work saying that he was available. We
21 had a position that was open that we were looking for multiple
22 people for.

23 Q. How did he check in for work?

24 A. I believe he called.

25 Q. All right.

1 A. And then -- so he told us that he was available for work.
2 We had a position that we were currently trying to fill, and we
3 placed him in that position.

4 Q. And what was that position?

5 A. It was SimpliSafe in Braintree.

6 Q. Did you have any back and forth with him about the job and
7 things like that?

8 A. Yes. We spoke with him on the phone about the position.
9 And then before we send anybody to a position, we send out a
10 confirmation e-mail giving them all the information that they
11 need.

12 Q. Did he reply to that e-mail?

13 A. Yes, he did.

14 MR. MALLARD: If I could have for the witness, Madam
15 Clerk, Exhibit Number 114.

16 BY MR. MALLARD:

17 Q. Take a look at that and tell us if you know what that is.

18 A. That is my e-mail with all of the information, the
19 position, the location that he's going to, who to ask for, job
20 description.

21 MR. MALLARD: Why don't we zoom in on the from, to,
22 subject area.

23 BY MR. MALLARD:

24 Q. Whose e-mail is this coming from?

25 A. That's from my e-mail.

1 Q. That's you, jacki.muh@expresspros.com?

2 A. Yes.

3 Q. To whom are you sending it?

4 A. It's diormauricecarter@gmail.com.

5 Q. Is that the e-mail you had for Diovanni Carter?

6 A. Yes, it is.

7 Q. What, generally speaking, are you telling him in this
8 e-mail?

9 A. I'm telling him that we're confirming the position that he
10 was going to be working on that following Monday.

11 Q. And what time did you send that e-mail?

12 A. I can't see it.

13 Q. Sometime around Friday?

14 A. Yeah, on Friday, January 25th.

15 MR. MALLARD: Okay. If we could continue on. If I
16 could have Exhibit Number -- first, I'd move --

17 BY MR. MALLARD:

18 Q. Is this Exhibit Number 114 that you've been looking at an
19 accurate copy of the e-mail that you sent to diormauricecarter
20 on that date about the job?

21 A. Yes, it is.

22 MR. MALLARD: Your Honor, I move this in as the next
23 exhibit.

24 MR. SULTAN: No objection.

25 THE COURT: Admitted.

1 (Government Exhibit 114 received in evidence.)

2 MR. MALLARD: Can we just quickly publish this to the
3 jury and focus on the top header piece again.

4 BY MR. MALLARD:

5 Q. And that was the date in which you e-mailed it --

6 A. Yes.

7 Q. -- was Friday, January 25th?

8 A. Yes.

9 MR. MALLARD: If I could have for just the witness
10 Exhibit Number 115.

11 BY MR. MALLARD:

12 Q. Do you know what this is, ma'am?

13 A. That is the reply back to the e-mail that I sent.

14 Q. Why don't we zoom in a little bit. From whom is the
15 reply?

16 A. From diormauricecarter@gmail.com.

17 Q. And what does the content say?

18 A. It's replying back saying "Yes, I received your e-mail,
19 and I will be there on Monday."

20 Q. Okay. So it looks like there's something of a negative
21 eight on the time stamp there. If you were to plus eight to
22 the nine, that's about 15:28; is that right?

23 A. Yes.

24 Q. And that previous e-mail that we looked at was at a
25 zero-zero time stamp; is that fair to say?

1 A. Yes.

2 Q. Is this a true and accurate copy of the e-mail that you
3 received back from the diormauricecarter@gmail address?

4 A. Yes, it is.

5 MR. MALLARD: Your Honor, I move this as Exhibit 115.

6 MR. SULTAN: No objection.

7 THE COURT: Admitted.

8 (Government Exhibit 115 received in evidence.)

9 MR. MALLARD: Can we quickly publish it to the jury?

10 BY MR. MALLARD:

11 Q. What happened on Monday with respect to the job?

12 A. On Monday we called the company. We do first day
13 check-ins. So we called the company to check in -- we had
14 multiple people starting that day -- to see who was there, if
15 anybody was late. And we heard that he was one of the ones
16 that was there that day.

17 Q. Okay. Did you have any other contact with Diovanni Carter
18 that day?

19 A. He did call later on that day saying that he was no longer
20 going to be able to be working there and was going to be
21 leaving the jobsite.

22 Q. Did he tell you why?

23 A. He said that he had a lot going on at the time and was not
24 able to commit to the schedule.

25 MR. MALLARD: I have no further questions -- actually,

1 just one moment, Your Honor.

2 (Pause.)

3 MR. MALLARD: No further questions, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. SULTAN:

6 Q. Good morning, Ms. Muh.

7 A. Good morning.

8 Q. So Diovanni went to work on Monday, January 28th, right?

9 A. Yes.

10 Q. And he called at the end of the day, right?

11 A. I believe it was the middle of the day.

12 Q. Did he talk to you?

13 A. Yes, he did.

14 Q. Okay. And did he tell you he had some personal family
15 issues and couldn't continue in that position?

16 A. I believe he just said that he had a lot going on. I
17 don't think he went directly into what family issues.

18 Q. Okay. But he gave you notice, right?

19 A. Yes, he did.

20 Q. In your experience, have you had associates who simply
21 didn't show up for work?

22 A. Frequently.

23 Q. That happens, right, and that can create kind of a problem
24 for your company?

25 A. Yes.

1 Q. But that didn't happen in this case, right?

2 A. Correct.

3 Q. He did the responsible thing by calling you, right?

4 A. Correct.

5 Q. Thank you, ma'am.

6 THE COURT: Redirect?

7 MR. MALLARD: Nothing further, Your Honor.

8 THE COURT: You're excused. Thank you.

9 THE WITNESS: Thank you.

10 MR. MALLARD: Your Honor, now I think -- this is when
11 we are going to get to the point of the issue that Mr. Sultan
12 raised before the jury came out.

13 THE COURT: I don't think their lunch is here yet.

14 THE CLERK: I can check.

15 THE COURT: Is there anything else we can do in the
16 next 15 minutes?

17 MR. MALLARD: There is. I just want to confer with my
18 co-counsel for a second.

19 THE COURT: All right.

20 (Attorneys confer.)

21 MR. MALLARD: Your Honor, I think I have a witness
22 that could go about 25 or 30 minutes if that would be
23 sufficient?

24 THE COURT: They've been sitting for two hours. So I
25 think I would like to recess for lunch at 12:00, and that

1 person can be finished right after lunch. Is that all right?

2 MR. MALLARD: I can probably condense it.

3 THE COURT: I don't like -- I think it's a lot to ask
4 the jury to sit for more than two hours at a stretch.

5 MR. MALLARD: That's fine, Your Honor.

6 THE COURT: And their lunch is hot today. So I don't
7 want it to get cold.

8 MR. MALLARD: I just want to make sure the witness is
9 in the hallway and not -- the government calls Trooper
10 Christopher Malm.

11 THE CLERK: Can you raise your right hand.

12 (Witness sworn.)

13 THE WITNESS: I do.

14 THE CLERK: Can you please state your name and spell
15 your last name for the record.

16 THE WITNESS: Christopher Malm, M-a-l-m.

17 CHRISTOPHER MALM, having been duly sworn by the Clerk,
18 was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. MALLARD:

21 Q. Good morning, sir.

22 A. Good morning.

23 Q. Where do you work?

24 A. I'm employed by the Massachusetts State Police.

25 Q. And how long have you been there?

1 A. Approximately six years.

2 Q. And what's your current assignment?

3 A. I'm assigned to the Massachusetts State Police Airwing out
4 of Lawrence.

5 Q. And what does that particularly entail in terms of duties?

6 A. We operate one of the four helicopters owned by the State
7 Police.

8 Q. One of the four?

9 A. Yes.

10 Q. What's your role in the helicopter?

11 A. Currently I'm an aircraft commander, and before that I was
12 a tactical flight officer.

13 Q. Which particular kind of helicopter do you operate?

14 A. A Eurocopter EC135, now owned by Airbus.

15 Q. What are some of the pieces of equipment that are on the
16 helicopter that you use in the course of your duties?

17 A. Some of the equipment we use is the FLIR camera,
18 forward-looking infrared. It's our primary piece of equipment
19 that we use for searching for people. We also have a
20 spotlight, microwave downlink, other technology.

21 Q. Microwave downlink, like to heat things up?

22 A. No. To broadcast a video signal.

23 Q. So not a regular microwave?

24 A. No.

25 Q. So tell us about the FLIR camera.

1 A. The forward-looking infrared, or FLIR, is a camera that
2 combines several different lenses or cameras into one. It can
3 see color camera, like a normal TV broadcast, but also, more
4 importantly, it can detect infrared radiation in the form of
5 heat.

6 Q. Now, sir, let's talk about sort of what FLIR actually is
7 and how it operates. Have you been trained on what FLIR is?

8 A. I have.

9 Q. And tell us about your training and experience in that
10 area.

11 A. When I first came into the Airwing approximately three
12 years ago, I immediately began training on the FLIR camera, one
13 of our most important pieces of equipment. You operate the
14 camera with a handheld controller, and you are able to adjust
15 it to magnify or intensify the differences between heat. So
16 different objects will give off a different infrared heat
17 signature.

18 Now, in addition to the training that I received
19 hands on, I've also trained with the company FLIR for infrared
20 technology and have received certificates from them.

21 Q. Have you used the camera yourself?

22 A. I have, many times.

23 Q. How many hours would you say you've logged on the camera?

24 A. I would say at least 500.

25 Q. And what are some of the -- I guess, if we could just

1 clear up some of the details about how it works. Does it allow
2 you to see through walls or into buildings?

3 A. No. It cannot see through a pane of glass. It can't see
4 through a wall.

5 Q. Why is that?

6 A. The technology that allows FLIR to work is that it --
7 although you may see a recognizable figure on the screen, it's
8 not a color camera. It's not looking at that figure. It's
9 actually looking at infrared heat. So something like a pane of
10 glass would simply reflect outside heat. A wall is just going
11 to show the temperature of that wall. Now, if there was a heat
12 source directly behind a pane of glass or wall, sure, the wall
13 would look warmer or the glass would look warmer, but you would
14 not be able to see what was beyond it.

15 Q. I guess theoretically you could tell if a house was heated
16 or not?

17 A. Exactly.

18 Q. But you couldn't determine whether a person was inside?

19 A. No.

20 Q. What about in terms of through, like, an obstacle like a
21 vehicle or into the back of a trunk or something like that?

22 A. No. Again, if you'd been driving a vehicle and the heat
23 had been on for a couple of hours, the glass on the outside of
24 that vehicle is going to appear much warmer than a vehicle
25 that's been parked. However, it's impossible for me to see if

1 someone is seated inside or inside at all.

2 Q. I guess the distinction is if the object is hot or hotter
3 than the ambient temperature, it's visible on the FLIR camera?

4 A. That's correct.

5 Q. But in terms of -- the FLIR camera can't penetrate through
6 any surface or anything to determine what the signature -- heat
7 signature is of something behind some sort of surface?

8 A. No. In fact, the technology is so limited that something
9 even a few inches below the surface of the water, submerged,
10 you wouldn't be able to see it all.

11 Q. What is the best application for a FLIR, and what are some
12 of the manners in which you put it to use?

13 A. Our primary use of the FLIR is looking for someone in a
14 wooded area, an area that would be difficult to search on the
15 ground.

16 Q. What are some of the environmental factors that make the
17 use of the FLIR camera more efficient or more effective?

18 A. Well, if you or I were standing in the woods, our body is
19 producing heat. And so that infrared radiation that you're
20 putting off is going to be much warmer than the environment
21 around you. So either an animal or a human being is going to
22 look a lot different on the FLIR camera than, say, a tree or
23 leaves or the ground.

24 Q. What about in a tropical environment where the ambient
25 temperature is almost consistent with body temperature?

1 A. It can be difficult. In fact, the same thing with hot
2 summer days, something called solar loading. So the sun has
3 been heating up the environment around you. That can be much
4 more difficult, which is why colder days and specifically after
5 dark are the most effective times to use the FLIR.

6 Q. Okay. And I want to draw your attention over to January
7 26th of 2019, that evening. Do you recall that date?

8 A. I do.

9 Q. What were you doing?

10 A. I was working out of the Lawrence Air Base as a tactical
11 flight officer, with the primary responsibility of using the
12 FLIR camera from 3:00 p.m. to 11:00 p.m.

13 Q. And what happened with respect to your assignment or duty
14 assignment that night?

15 A. I recall that it was actually a very busy night. And one
16 of the calls that we did get was to respond to Brockton for a
17 search.

18 Q. Okay. And what time did you get there, roughly, based
19 upon your best memory?

20 A. I believe we received the call about 7:15 p.m. And so it
21 would have been, you know, 10 or 15 minutes to start the
22 helicopter and get on our way and then flight time from
23 Lawrence to Brockton.

24 Q. So, once you got there, what were you directed to look
25 for? Where were you looking?

1 A. While we were on the way to Brockton, I believe that we
2 were given limited information, that we were looking for one,
3 possibly two, people who had fled from a vehicle, I believe in
4 the area of Carl Ave. And our attention specifically was drawn
5 to a wooded area that abutted that road. We were asked to
6 search that area.

7 MR. MALLARD: If I could have it just for the witness,
8 Your Honor -- I'm sorry, Madam Clerk, Exhibit Number 72.
9 Sorry, 73.

10 BY MR. MALLARD:

11 Q. Do you know what this is that's being played on Exhibit
12 Number 73 there for just you?

13 A. I do.

14 Q. Is it a clip of a larger capture of the FLIR camera?

15 A. Yes, it does appear to be.

16 Q. And have you had a chance to view -- first, does the FLIR
17 camera record when it's in operation?

18 A. So we have a recording device on the helicopter. It's
19 separate from the FLIR camera. So it's -- you have to be -- it
20 has to be independently turned on with a switch.

21 Q. Was that done so this night in the city of Brockton for
22 that search in the Brockton area?

23 A. It was.

24 Q. Is Exhibit Number 73 that you're viewing a portion of the
25 larger clip that was made of the FLIR camera that night?

1 A. Yes, it is.

2 Q. And just to cut to the chase, did you locate the
3 individual that you were searching for that evening?

4 A. No, we did not. Despite our exhaustive efforts, we did
5 not locate anyone.

6 Q. Looking at Exhibit Number 73, is that an accurate copy of
7 the clip from the larger portion of the video?

8 A. Yes. I recognize the scene.

9 MR. MALLARD: If I could move Exhibit Number 73 into
10 evidence, Your Honor.

11 MR. SULTAN: No objection.

12 THE COURT: Admitted.

13 (Government Exhibit 73 received in evidence.)

14 MR. MALLARD: If you could play it and publish it to
15 the jury.

16 BY MR. MALLARD:

17 Q. And if you could describe to the jury what we are looking
18 at.

19 A. We are looking at a wooded area surrounding -- there was
20 sort of an apartment complex and a school, I believe, where the
21 outer limits of our search area, where the car was located, the
22 apartment complex and then a school. There was a wooded area
23 with several paths, and we were checking that area for any
24 infrared radiation, so any heat. Heat would be recognized
25 currently as white. Anything that you'd see bright white would

1 be warmer than the black environment around it.

2 Q. And are you communicating with the officers on the ground
3 at the time?

4 A. We are.

5 Q. And how are you doing that?

6 A. We have radios on board the helicopter for pretty much
7 anywhere in the state. We're able to come right up on that
8 department's frequency and speak directly to the officers on
9 the ground.

10 Q. It looks like you're zooming in and out. What's the
11 purpose of that?

12 A. As we come around in the orbit, if something did catch my
13 eye, say right there it's a little bit warmer than the
14 environment around it, you would want to quickly zoom in,
15 either rule it in or out, and then keep going, keep moving on.

16 Q. How do you determine vehicles or the other officers on the
17 ground?

18 A. Very frequently, you know, we'll find out who was in the
19 woods. And, to be honest, quite often we'll see someone and
20 say, "Okay. If there's any police officers in the woods, raise
21 your hand," and then we're able to immediately rule that person
22 out.

23 Q. It looks like you are directed to a certain wooded area
24 during the course of your search there?

25 A. Yes.

1 Q. Is that the area that you spent the majority of your time
2 and attention?

3 A. Yes, it is.

4 Q. What are these figures there that you just zoomed in on
5 now?

6 A. So as you can see right there, you can see the K-9 out in
7 front, and then you can see a number of police officers behind
8 the K-9.

9 Q. Okay. And what were you doing with respect to these
10 officers as they're there?

11 A. We were in direct communications with all the officers on
12 the ground. At one point during the search -- I don't know
13 where this clip picked up. At one point I was directing a
14 number of officers to a heat signature which I had thought
15 would possibly have been a suspect.

16 Q. And, ultimately, was that the case?

17 A. No. After looking at it for several minutes, I was able
18 to clearly define the object as a deer.

19 Q. What's this item on here on the right that is sort of
20 glowing a little bit more that doesn't look like an individual?

21 A. That would be a police cruiser or other vehicle that had
22 been recently used. And if you can see in that video right
23 there, the difference between a vehicle in the driveway versus
24 a vehicle there, you can tell which ones have been recently
25 driven.

1 Q. It appears to be one moving, as well?

2 A. Yes, exactly.

3 MR. MALLARD: Fast-forward this clip just a little
4 bit. Maybe two minutes. Right there.

5 BY MR. MALLARD:

6 Q. Now, at this point you're sort of in an orbital function;
7 is that right?

8 A. Yes.

9 Q. Is this sort of where you maintain the majority of your
10 attention that evening, in this wooded area around this larger
11 complex of buildings?

12 A. The vast majority, yes. As the public began to become
13 aware that there was a search, there were some 911 calls about
14 noises in backyards and things like that, I recall later in the
15 evening, and we did check those. But this would be the bulk of
16 our time was spent on this area surrounding the vehicle.

17 MR. MALLARD: Fast-forward just a little bit.

18 BY MR. MALLARD:

19 Q. Did you find anything of interest in the woods beside the
20 suspects that evening?

21 A. In addition to the deer, we ended up warning a lot of the
22 officers that were on foot in the woods because there was a
23 couple of coyotes -- actually, there they are. We saw two to
24 three coyotes in the woods. And I think they were tracking the
25 deer.

1 Q. So the coyotes were tracking the deer, and the officers
2 were tracking the coyotes?

3 A. Exactly.

4 Q. And you were all above them?

5 A. Yes.

6 MR. MALLARD: If you could zoom back -- I am going to
7 pull back the exhibit to -- towards the beginning.

8 BY MR. MALLARD:

9 Q. Are you familiar with the general area of this particular
10 zone?

11 THE COURT: Mr. Mallard, it sounds like you are sort
12 of starting another topic, and we are not going to finish it
13 before lunch, the short lunch break. So I'm going to recess
14 until 12:30, and then we'll resume with him.

15 MR. MALLARD: Thank you, Your Honor.

16 THE CLERK: All rise for the jury.

17 (The Jury is not present for the following.)

18 THE COURT: What do you want to do about the exhibit?

19 MR. SULTAN: I'm happy to make a suggestion, basically
20 if the Court wants to spend a few minutes going through it.
21 It's going to have to be kind of looking at it line by line.
22 I'm ready to do that.

23 THE COURT: Okay. I have to handle something else at
24 12:00, too. So I just need to be efficient about it, okay.

25 MR. MALLARD: I think Mr. Sultan and I can consult,

1 and I think we can probably reach an agreement.

2 MR. SULTAN: Maybe we should do that and not take the
3 Court's time.

4 THE COURT: Why don't I come back out at 12:25.

5 MR. SULTAN: That's great.

6 (Luncheon recess at 12:01 to 12:26 p.m.)

7 MR. MALLARD: I think the court has an updated 16.1.

8 THE COURT: I have the one you gave me this morning.

9 MR. MALLARD: Right.

10 THE COURT: Yes.

11 MR. MALLARD: Mr. Sultan and I have agreed that the
12 further two columns, the search term and URL, which are the
13 pieces that contain the content, are going to be redacted sort
14 of as a general matter, except for a couple of items which the
15 government would offer as sort of indicia of common use and
16 pattern. So everything on page 1 will be gone, page 2. We've
17 agreed up until essentially page --

18 THE COURT: If you agreed, I don't need to know
19 exactly what you agreed to. Are there any disputes?

20 MR. MALLARD: The disputes are --

21 MR. SULTAN: There are 13 in dispute. Twelve of them
22 are about guns, and then there's an Attorney Jessica Tripp.
23 Thirteen are about guns, and then there's Jessica Tripp. So
24 those are the ones we disagree about.

25 MR. MALLARD: It might make sense to start from the

1 back working forward.

2 THE COURT: All right. That's fine. Just give me a
3 date and entry.

4 MR. MALLARD: Mr. Sultan is objecting to 1042, which
5 is on January 26, 2019.

6 MR. SULTAN: If you're starting backwards, let's start
7 at 1061.

8 MR. MALLARD: Sure. Jessica Tripp, attorney.

9 THE COURT: All right. I'm going to take that one
10 out.

11 MR. SULTAN: 1043 is the next one we disagree on,
12 right?

13 MR. MALLARD: 1043, yes, is how to build your own
14 AK-47 Glock or AR-15.

15 MR. SULTAN: There are no such weapons in this case,
16 Your Honor.

17 MR. MALLARD: The government would argue that that's
18 when they're, as Dennis Martin indicated, getting ripe and
19 getting the firearms for the incident, and that firearms being
20 searched for is consistent with the plan and would corroborate
21 his testimony.

22 MR. SULTAN: There are searches about Glocks going all
23 the way back to December 16. This case has nothing to do with
24 a Glock.

25 THE COURT: Well, let me look at the whole chunk of

1 them. Give me the numbers.

2 MR. SULTAN: There's a big bunch. 550 to 557.

3 THE COURT: Five --

4 MR. SULTAN: 550 to 557 on December 16.

5 THE COURT: Yup. What are the others?

6 MR. SULTAN: 567 on December 17.

7 THE COURT: Wait a minute. Hold on a second. Five --

8 MR. SULTAN: 567.

9 THE COURT: Let me just mark these so I can go back
10 and take a look at them.

11 I'm going to take -- 567 is out just because of the
12 time relationship.

13 MR. SULTAN: How about 550 to 557, Your Honor?

14 MR. MALLARD: Your Honor, I just want to briefly be
15 heard on that. The Glock 47 is sort of a rather unique thing
16 to be searching for. It's not like, you know, a pistol
17 tomorrow. He then searches for Glock 47 about two hours before
18 the robbery, which I think is going to be consistent with the
19 same individual operating the account. It has sort of an
20 attribution component to it as well.

21 THE COURT: I hear you, but I don't -- it's just I
22 don't think that in the prejudice probative balance that it
23 comes out. I mean, there's not been any evidence whatsoever
24 that they started planning this in mid-December.

25 MR. MALLARD: No, I understand that.

1 THE COURT: So the same on 549 to 557.

2 MR. MALLARD: 550, you mean?

3 THE COURT: I marked 549, but did you ask me for 550?
4 Yeah, 550 to 557. Sorry, that was my bad.

5 MR. SULTAN: And then you already said 567, Your
6 Honor.

7 THE COURT: 550 to 557 are out. 567 is out.

8 MR. SULTAN: The next one is 625, AR-15, and 626.

9 THE COURT: 625 and 626. Same, those are out.

10 MR. SULTAN: And then the next one is 815 on January
11 13.

12 THE COURT: 815. What's the testimony going to be
13 about the earliest date they started planning this?

14 MR. MALLARD: I think it's going to be January 26.

15 THE COURT: This one's out, too.

16 MR. MALLARD: So that's 815?

17 THE COURT: 815.

18 MR. SULTAN: Then we get to January 26. So 1042, on
19 January 26 at 5:30 p.m., search for Glock 47. So I'm going to
20 buy a Glock over the Internet and go commit a robbery an hour
21 later? So I would say under 403, Your Honor, it should be
22 excluded, and 401.

23 THE COURT: I mean, what is the theory?

24 MR. MALLARD: Well, I think you heard testimony from
25 Dennis Martin that there are communications. He gets brought

1 into the group sort of later on.

2 Our position would be that Diovanni Carter formulated
3 the plan to rob the T-Mobile as early as that morning when he's
4 down there visiting it, Googling it.

5 I'd say around 5:30 -- that's about two hours before
6 the robbery, less than two hours before the robbery. He's
7 Googling firearms. There's information he handed out at least
8 one of the firearms and other members had firearms. The fact
9 he's looking at firearms at that time signifies the fact that
10 he's a member of the plan, that he's looking at guns, that he
11 then armed people with other types of guns later on.

12 THE COURT: I mean, if he made a phone call to someone
13 about getting a gun, I understand that, but I don't understand
14 what's going to happen when you Google Glock 47 two hours
15 before the robbery. I just want -- what's your theory on that?
16 I don't understand.

17 MR. MALLARD: It shows a state of mind. It shows what
18 he's thinking about. It shows what his interest and activity
19 is. It shows what he's doing. At the time he's planning the
20 robbery, he's Googling weapons, firearms in particular, and
21 firearms were used in the robbery less than two hours later.

22 MR. SULTAN: He's in a firearm state of mind.

23 THE COURT: What are you going to get when you Google
24 Glock? You're going to get like --

25 MR. MALLARD: That's a very specific model number.

1 MR. SULTAN: There is not a Glock in this case.

2 THE COURT: I mean, I see that he's committing a
3 robbery, or allegedly committing a robbery, and I see that he's
4 interested in Glock 47s, but I'm having a hard time really -- I
5 mean, it could have been -- he could be operating like a
6 firearms ring on the side. I'm just not sure I can connect
7 them up.

8 And I'll tell you, I mean, this case, at least in my
9 humble opinion, Mr. Sultan may differ, it's being tried super
10 clean. Everybody's been very careful, and I don't want to put
11 in -- it's highly prejudicial, and I don't understand the link.
12 If I could understand the link -- if he Googled where to buy
13 guns or where to pick up guns or how to operate a gun that he
14 had that he didn't --

15 MR. MALLARD: I would just tell the court I don't
16 think it's a coincidence that two hours before three men that
17 he armed with firearms, in a vehicle that he's renting that
18 he's planned on, looked at, that he's Googling weapons less
19 than two hours beforehand a certain type of firearm. The fact
20 he didn't Google the exact make and model of the firearm that
21 he gave to his brother and the cooperating witness and the
22 other guy, I don't think should exclude this evidence from
23 being in front of the jury. If he searched for firearms at the
24 time, I think it would be relevant.

25 THE COURT: If he searched for like Dick's Sporting

1 Goods gun department, I completely agree with you, right? He
2 wants to figure out where they are and where he can buy them.

3 MR. SULTAN: Gun shops near me, right.

4 THE COURT: Right. I just think it's a very close
5 call, and --

6 MR. MALLARD: He then Googles a minute later, how to
7 build your own AK-47.

8 MR. SULTAN: Right. And how is he going to build an
9 AK-47 before the robbery, Your Honor?

10 MR. MALLARD: I think it signifies that he's thinking
11 about it, discussing it potentially with the other
12 co-conspirators, the ones that precede Martin, and it
13 definitely shows what this group, before Martin joined it
14 essentially, was doing.

15 THE COURT: It definitively shows that his client has
16 an interest in a gun. It definitely shows that. And I don't
17 think your argument is crazy. I just think -- I'm just -- let
18 me think about it. Let's go through these others. Let's get
19 back to that.

20 MR. SULTAN: That's all.

21 MR. MALLARD: That's it.

22 THE COURT: Didn't you just tell me 1050, 1051?

23 MR. MALLARD: There's other firearms that he Googles
24 previously, but if the court's going to --

25 MR. SULTAN: They've agreed everything else comes out.

1 THE COURT: The Channel 7 breaking news -- did you
2 just tell me 1050 to 1057? Didn't someone just --

3 MR. SULTAN: No, there were no others.

4 THE COURT: I thought someone flagged that for me.

5 MR. SULTAN: I don't think there were any others, Your
6 Honor. There were 13 that relate to firearms and there's the
7 one that relates to Jessica Tripp. Your Honor, the probative
8 value is zero or minuscule and the prejudice is extreme. And
9 it's just --

10 THE COURT: Here's the thing: If he's looking for
11 guns at 5:30, right? -- I mean, how to make your own Glock, I'm
12 not going to let him get in. But if he's doing a search for a
13 Glock 47, I mean, that may be a search of like where do you get
14 one.

15 MR. SULTAN: But that's not what the search was -- it
16 doesn't say that's what the search was for. It's sheer
17 speculation that he's looking for a Glock 47 at 5:30.

18 THE COURT: Two hours before he, on their theory, he
19 commits an armed robbery.

20 MR. SULTAN: An hour and 40 minutes. It's sheer
21 speculation. You have the prejudice -- you don't have the
22 link. There's no link.

23 THE COURT: If I want to buy something, I might just
24 Google that thing.

25 MR. SULTAN: But there's no Glock 47 in this case.

1 THE COURT: Because he didn't find one.

2 MR. SULTAN: Well, this is like all fantasy, Your
3 Honor.

4 THE COURT: Except that the time proximity is so close
5 to the robbery. If you're planning a robbery, are you -- like
6 I'm not sure you're -- you're planning an armed robbery, let's
7 just say, it seems like an hour and a half before the armed
8 robbery that's what you're focusing on, right?

9 MR. MALLARD: It's actually an hour before they left
10 in the car to go down there. They left I think around 6:40.

11 THE COURT: I'm going to Google Glock 47 and see what
12 comes up.

13 MR. SULTAN: If there was a Glock 47 in the case, Your
14 Honor, I'd agree with you.

15 THE COURT: Glock -- let's see.

16 MR. SULTAN: I bet you'll get a list of want ads for
17 one.

18 THE COURT: He's right. I'm not getting anywhere to
19 buy one. I'm just getting that it's a brand-new -- it's like a
20 new thing. Look, I think it's a close call. But as far as I'm
21 concerned, I feel like it's a tie, and the tie goes to the
22 runner, which in this case is Mr. Carter. So I'm keeping it
23 out.

24 When do you think you're going to rest? The reason
25 I'm asking is I have agreed to do the BC moot court on

1 Wednesday night. I'm going to have to leave here at like 3:00
2 or 3:30 unless they cancel it because of the coronavirus. Are
3 you thinking the jury is going to have been charged by
4 Wednesday afternoon?

5 MR. MacKINLAY: Possibly.

6 THE COURT: When do you think you'll rest?

7 MR. MacKINLAY: I would suggest as early as Tuesday we
8 could rest.

9 THE COURT: Like Tuesday morning.

10 So if they rest Tuesday morning, what are you going to
11 do, generally speaking, in terms of time?

12 MR. SULTAN: It certainly won't go past Tuesday, Your
13 Honor.

14 THE COURT: Do you think you'll have time to close and
15 charge on Tuesday?

16 MR. SULTAN: I don't know. Maybe. I don't want to
17 commit to that, Your Honor. But even if we did closing and
18 charge on Wednesday morning, Your Honor should be able to
19 attend that 3:30 --

20 THE COURT: It just means I have to leave somebody
21 else for the deliberating jury. I'm fine doing that. I just
22 need to work out the mechanics of it.

23 MR. SULTAN: I think we'll have a better idea at the
24 end of Monday, Your Honor. I'm not sure. I'm not trying to be
25 difficult. I'm not putting on a long defense, if that's what

1 you're asking.

2 THE COURT: I understand. I get what you're saying.
3 Any chance you'll rest on Monday, or do you think Tuesday is
4 the earliest?

5 MR. MacKINLAY: I don't see any way we rest on Monday,
6 Your Honor. I absolutely see us going into Tuesday morning. I
7 do think we will be resting from noon on Tuesday, but that's a
8 very tight window to hit from here.

9 THE COURT: I know. I'm not holding you to it.

10 MR. SULTAN: I'd rather not get that smooshed. I'd
11 rather do closings and charge Wednesday morning, if we could.

12 THE COURT: At the very least if I can charge on
13 Tuesday, I'll charge on Tuesday.

14 MR. SULTAN: That's fine.

15 THE COURT: Do you have a view on whether we charge
16 first before or after closings?

17 MR. SULTAN: I've never seen that before, but I saw
18 Your Honor has done that, and I think it's fine. I think it's
19 a good idea.

20 MR. MacKINLAY: Agreed.

21 THE COURT: So I'm not trying to lock you in. I'm
22 just trying to do some planning here.

23 MR. MacKINLAY: Sure.

24 THE COURT: I will give you the charge by Monday
25 morning, and we either -- I'd like to be able to have a charge

1 conference Monday afternoon, but if we can't, we'll do it on
2 Tuesday. Okay? All right?

3 Do you want to see if they're done, Karen? Please
4 don't rush them if they're not done.

5 (A recess was taken 12:43 to 12:47 p.m.)

6 MR. MALLARD: Your Honor, have you ruled on Exhibit
7 105, that's the Puff conversation?

8 THE COURT: So I tried to figure out what I could do
9 for a limiting instruction on that. I can't figure out a
10 limiting instruction, which suggests to me it's problematic.
11 So I'm going to keep that out too.

12 MR. MALLARD: I'll have that redacted right now.

13 THE COURT: The one with the street address.

14 MR. MALLARD: We'll just do number 3.

15 MR. SULTAN: Which one are you talking about?

16 MR. MALLARD: Just the one where it's Trouble.

17 THE CLERK: All rise for the jury.

18 (Jury enters.)

19 JUROR: Sorry, Your Honor.

20 THE COURT: It's not your fault. They send up lunch
21 on time almost every single day, except for today. So we have
22 less flexibility, but it's fine. We're doing fine on
23 scheduling. So no matter. I hope no one felt like they had to
24 wolf down their lunch.

25 When you're ready, Mr. Mallard.

1 MR. MALLARD: Thank you, Your Honor.

2 BY MR. MALLARD:

3 Q. Can I take you back very briefly. You were talking about
4 that you were searching the area of Carl Ave.

5 A. That's correct.

6 Q. Is that the area that you focused your attention on that
7 night?

8 A. Yes. As I said earlier, the primary focus of our
9 attention was a large wooded area, which was adjacent to Carl
10 Ave., bordered by a school, a large apartment complex, and the
11 position where the vehicle was located.

12 Q. And what time did you get there?

13 A. We arrived on scene at approximately 8:00 p.m., and I
14 believe we started recording video at 8:11 p.m.

15 Q. All right. What time did you get out of there?

16 A. We were on scene for approximately an hour and a half, and
17 then we departed to refuel at Plymouth Airport.

18 Q. And just in conclusion, you didn't find the suspect you
19 were looking for?

20 A. No, we did not.

21 MR. MALLARD: No further questions.

22 MR. SULTAN: No questions, Your Honor.

23 THE COURT: Sorry to have made you stay.

24 THE WITNESS: No problem at all, Your Honor.

25 THE COURT: You're excused.

1 MR. MALLARD: The government calls Matthew Kelsch.

2 THE CLERK: Please raise your right hand.

3 (Witness sworn.)

4 THE WITNESS: I do.

5 THE CLERK: You may be seated. Please state your name
6 and spell your last name for the record.

7 THE WITNESS: Yes. I'll spell both just because it's
8 a little bit different. It's Mattheu, M-a-t-t-h-e-u. And the
9 last name is Kelsch, K-e-l-s-c-h.

10 MATTHEU KELSCH, having been duly sworn by the Clerk,
11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. MALLARD:

14 Q. Good afternoon, sir.

15 A. Good afternoon.

16 Q. Tell us about your background and where you work.

17 A. I'm employed as a special agent with the Bureau of
18 Alcohol, Tobacco, Firearms and Explosives, or more commonly
19 known as ATF.

20 Q. How long have you been there?

21 A. I've been with ATF for just under 20 years now.

22 Q. Tell us what you started doing when you joined ATF and
23 where you are now?

24 A. Basically I've been at ATF doing general criminal
25 investigations specializing in arson and explosives

1 investigations, and after a series of years, I switched over
2 and worked firearms investigations, and they mainly revolved
3 around trafficking of firearms and illegal use and possession
4 of firearms.

5 Q. And since then?

6 A. Since then, or around 2012, I took on a collateral duty,
7 and that duty with ATF was a digital media collection
8 specialist. It's a fancy name for someone who extracts data
9 from cellular devices like cell phones and other items like
10 that. ATF has a certification program that agents go through
11 to obtain that qualification. Shortly after starting that I
12 applied to and was accepted to be part of ATF's forensic
13 examiner certification. That's a higher level certification,
14 where an agent goes through additional training, and they're
15 allowed to perform forensic examinations of other devices such
16 as computers and whatnot.

17 Q. So you not only became a digital media collection
18 specialist. You then went on to become an examiner?

19 A. Within ATF I did, yes.

20 Q. What's the difference?

21 A. Mainly a level of training that's involved with it. The
22 digital media collection specialist is a shortened course
23 that's run by ATF. The forensic examiner course is run by some
24 outside agencies and it requires standardized testing and
25 grading and peer review as part of it.

1 Q. Tell us about the process that you took to become the
2 digital forensic examiner and that particular qualification?

3 A. So that particular qualification required a number of
4 courses. Some of them included courses that were offered by
5 vendors or such companies as Cellebrite, which are outside
6 vendors that supply tools to law enforcement and other
7 individuals. And you attend those courses. You're given
8 written testing at the end of it, and you're also given
9 examples.

10 So, for example, they will produce a phone that has
11 certain data on it that they've made themselves, and they'll
12 give you a test to see if you can find the information that's
13 on that prepopulated data. Once you pass those examinations,
14 you're given a certification with them.

15 We do the same in the computer environment, where
16 we'll do the same type of testing. You're given tests, and you
17 get three graded testing that you have peer review on. Once
18 you complete those three tests, you move on to three tests
19 where you're graded. Once again, they're normal things. So
20 they'll give you something like a USB, like a thumb drive or a
21 hard drive from a computer, and you have to analyze that and
22 make sure you're able to find the data that's on there.

23 Q. Is there any sort of a certification process that you go
24 through or certification that you receive once you go through
25 this process?

1 A. Yes. Once you finish that with ATF, you're considered a
2 certified forensic examiner for it.

3 Q. Do you have any other qualifications and training in this
4 area?

5 A. Yes. So fortunately about three years ago, the FBI,
6 Federal Bureau of Investigation, opened up a regional computer
7 forensic lab. So they have laboratories that are throughout
8 the country, and they are collaborative between the FBI and
9 other state, local and federal agencies.

10 So here in Chelsea, Mass. we opened up an RCFL, as we
11 call it, so Federal Computer Forensic Laboratory, RCFL, and
12 it's comprised of half FBI employees and what they call task
13 force officers, so detectives and investigators from other
14 agencies. Here in Chelsea we have members from the State
15 Police, Boston Police, Framingham Police, Middlesex Sheriff's
16 Department and others. And I was fortunate enough to apply for
17 and be accepted to that program.

18 Within that program the FBI has its own forensic
19 examiner certification. That's a 13-week course. That's held
20 down in Quantico, Virginia. Unfortunately it's not 13 weeks
21 straight. You go down and there's a number of courses,
22 approximately two weeks at a time. Each one of those courses
23 specialize in different fields. So some will be for mobile
24 forensics. Some will be just for Apple computers. Some will
25 be for Windows computers and whatnot. Once you complete that

1 entire certification process, you move on to another testing
2 phase, like I described before, where you have to do a test
3 where you're given known data, and you have to produce results.

4 THE COURT: Okay. Stop for one second. I'm going to
5 take mercy on the court reporter and ask you to speak a little
6 bit slower.

7 THE WITNESS: I'm sorry about that.

8 THE COURT: It's fine.

9 A. So you go through a known process, and once you pass that,
10 you are considered a forensic examiner within the FBI.

11 Q. Is that a current qualification that you now hold?

12 A. It is, yes.

13 Q. Are you still associated with that lab?

14 A. Yes. Currently I act as a deputy director of that lab.

15 Q. All right. Let's kind of break down sort of what you do
16 on a daily basis and what types of information you look at.
17 What are some of the types of devices that you examine and how
18 does that work?

19 A. Sure. As a forensic lab -- and myself, even though I'm in
20 the role as deputy director, I'm also an active examiner. So I
21 supervise examiners in the lab, but I also still do work
22 myself. That work can be any type of digital media. So it
23 could be a USB, CDs, DVDs, any type of hard drive in computers,
24 but basically anything that we can take, make a forensic copy
25 of and then analyze later on.

1 Q. How do you analyze it once you get that forensic copy?

2 A. So there are a number of different tools that are used to
3 analyze that data. Specifically in cell phones we use a
4 program called Cellebrite. There are other programs we use for
5 Windows and Mac computers as well.

6 Q. Let's talk about cell phones for a second. What's the
7 process of analyzing a cell phone from start to finish? Just
8 quickly, but all the way from the beginning to the end.

9 A. So basically when we receive a cellular phone device,
10 we'll take that device in. We'll photograph it in its current
11 state. We'll inspect it and document it. So we'll notate
12 anything about it, whether it's damaged, if there's anything
13 included with it. Once we get through that documentation
14 phase, we'll make sure the devices is secure. Sometimes the
15 devices are on, sometimes they're off. We'll make sure that
16 they're in a state where they won't wipe, where they couldn't
17 be arrested for any reason.

18 Once we're satisfied that we're at that level, we'll
19 take that device, and it's kind of a two-part process. The
20 device is hooked up to software. The majority of the cases
21 it's with a program called Cellebrite, C-e-l-l-e-b-r-i-t-e, and
22 that device will extract the data off the phone device.

23 That data, once it's extracted, isn't something that
24 the normal person could look at. It's a large file, but you
25 can't click through it and see anything like you would in

1 Windows.

2 That data is then taken and placed into another
3 program that's offered by Cellebrite, something we call
4 Physical Analyzer. When it goes into that program, it
5 categorizes that data. So it takes all that data that came off
6 the cell phone that you see when you look at your call logs and
7 your texting, and it takes it and it puts it in little
8 containers. So if you think about when you go online and you
9 look at your email and you see on the left you may have
10 different folders for your different groups where you keep
11 emails, like your inbox, your outbox, your sent box. It takes
12 all those artefacts, those individual pieces of data that are
13 on the phone, and it puts it into categories. So you would
14 have your call log. You would have emails. You would have
15 text messages. And that goes for any type of communication
16 that you have on a phone.

17 It also creates categories for images and videos and
18 other documents, if you had a Word document or Adobe document
19 on there. It breaks it all down in a way that the examiner
20 could see it and search it. They could search it visually by
21 scrolling through and seeing the photos, or they could put
22 keywords searches in. So if you knew phone numbers or names
23 that you wanted to look up, you could do so easily.

24 Q. So there's a two-part process, extraction and examination?

25 A. That's correct.

1 Q. What happens if the phone is password protected?

2 A. If the phone is password protected, sometimes we have
3 localized tools that we can use to unlock that. There are
4 other times that we do not -- our lab is not one of the labs
5 that's designated to have some of the more advanced tools. In
6 cases where we need a more advanced tool, that phone will be
7 shipped out for someone else to extract that data.

8 Q. Are you familiar with the name Sukhpreet Darhele?

9 A. Yes, I am.

10 Q. Who is that?

11 A. Commonly known to us as Ricky, but he's a contractor that
12 works for ATF and he spends the majority of his time unlocking
13 and extracting data from iPhones in particular.

14 Q. And if the process is it needs to be unlocked, what
15 happens when it comes back to you?

16 A. So once that data is extracted, it's placed in a number of
17 files. The particular machine, which is called GrayKey, that
18 extracts that data, takes each of those files, and it gives it
19 a hash. A hash is kind of like a digital signature. So it's a
20 fingerprint for a file. So every file, no matter what it is,
21 kind of has a digital fingerprint. It's a hash. And that hash
22 is just a long number that the computer calculates. You don't
23 do it by hand. The computer does it for you. There's software
24 that calculates that hash. If any part of that data was
25 changed in any way whatsoever, that digital fingerprint or hash

1 would change. So when the data is given to us, we're given a
2 number of files that come with that data, and we're given a
3 sheet automatically produced from the GrayKey machinery that
4 gives us a hash for each of those files.

5 Q. Once you get the stuff back with the GrayKey and the hash,
6 what do you do with it, and how do you actually get it into the
7 examination program?

8 A. So that data would be copied over. Normally it's in a
9 thumb drive that's given to us. They'll make two copies. One
10 copy that goes into evidence that isn't touched that's saved,
11 and we have a working copy that the examiner works on. Just in
12 case anything happens to it, we have two copies. We don't want
13 to lose that data.

14 The working copy is copied over to our network, just
15 a staging area that we have to work on that data, and the first
16 thing we do once we copy that data over is hash it. So we
17 check that digital fingerprint to make sure that none of that
18 data has changed from copying it from one place to another.

19 Q. Once it's in the program, what happens next?

20 A. So once we have that data saved, we can import it into
21 whatever tool we're using. In most cases it's Cellebrite
22 Physical Analyzer. Once it goes into that tool, it goes
23 through that whole process that I just explained where it kind
24 of sorts all that data into the different categories and
25 folders so we can see them.

1 Q. From there, can you then review it and make additional
2 reports and things like that from it?

3 A. Yes, you can. You can review it. You can create reports.
4 You can sort the data. You can do all sorts of searches and
5 tests on it.

6 Q. Does the Cellebrite program generate any information about
7 the device or the image of the device that it's then looking
8 at?

9 A. It does have a tab that gives some basic information about
10 that cellular device, yes.

11 Q. What type of information is that?

12 A. Commonly it will give, on an iPhone in particular, it will
13 give the name of the iPhone. So when you set up an iPhone, you
14 can give it whatever name you want. It will have whatever
15 email is associated with the person's iCloud account. It will
16 have an IMEI, which is the -- it's the digital serial number of
17 that device.

18 Q. Are you familiar with how a cell phone generally operates?

19 A. Yes.

20 Q. Let's talk a little bit -- are there things that the cell
21 phone generates in the usual course of its activity?

22 A. Yes.

23 Q. Are there things that it stores automatically?

24 A. Yes. So there are things that happen on a cell phone when
25 a user uses it. So if you're, for example, entering a contact

1 on a cellular device, it will save that data for you. But
2 there are also things that happen in the background that you
3 don't see where it's checking things. It's also taking that
4 information and saving it in other places that you would never
5 know about.

6 Q. What happens when a phone makes a call and receives a
7 call?

8 A. So when anything like that happens on a cell phone, it's
9 saved in something almost like a spreadsheet. So if you know
10 an Excel spreadsheet, it's got all sorts of columns and rows.
11 They're called databases. Those databases are populated with
12 different fields. So for example, in a cell phone call like
13 we're talking about, it would have that database. It would
14 have a category for each. So it would have whether it was
15 incoming or outgoing, the date and the time that that phone
16 call was made. It would have the phone number that was sent or
17 received. It would have the person's user name that they gave.
18 So if you had someone in your address book, it would link that
19 name to it. So it puts all that in a database and it stores
20 it.

21 Q. And same thing with text messaging and other types of
22 conversations?

23 A. Yes, there are different databases that are located on the
24 phone. So it's not just one big database. There are different
25 databases for each category, but they all exist, yes.

1 Q. What about in terms of web searches and web history?

2 A. Web searches are also saved in a slightly different
3 format, but they are all saved within the phone.

4 Q. And is all that type of data accessible from the image
5 that you load into the examination program?

6 A. Yes. In many ways we can look at it. In a way it almost
7 looks like when you're looking at the phone, but we can
8 actually go and look at that actual database, too, and it
9 almost looks like a spreadsheet. So it's not an image on a
10 phone, but it's the spreadsheet itself that we can see as well.

11 Q. Is the user able to delete that data or delete those
12 databases at some point in the course of the use of the phone?

13 A. The user is able to delete information in a database, and
14 then it depends on the software and the hardware as to whether
15 or not it's written over immediately or written over later.
16 Sometimes things are deleted on the database that will remain
17 for a short amount of time before they're written over, but at
18 some point if they're marked to be deleted, it will be deleted
19 or written over at some point.

20 Q. How do Apple devices communicate among other Apple
21 devices?

22 A. Apple is a little unique, although other companies are
23 copying this, where they have a messaging service, and other
24 services that are just strictly for Apple. Obviously
25 everything that usually starts with "i" in Apple. So it's

1 iMessaging. You also have FaceTime that's part of that.

2 IMessaging allows any two Apple users -- so if you were on an
3 iPhone or and iPad or some sort of Apple computer, you could
4 message someone back and forth. That messaging is a little
5 different than text messaging. Text messaging, when it's sent,
6 goes through the cellular provider. So if you had an AT&T
7 phone, those text messages would go to AT&T to be sent to
8 whatever person was going to receive it. If you're both on
9 Apple device, and it's set up for this, that data would go
10 strictly between those two devices using Apple servers. So
11 that information would never hit the AT&T service, for example.

12 The easiest way to see that is if you're on an iPhone
13 and you're sending a text message, for example, a green bubble
14 would be if you're texting with someone and a blue bubble would
15 be if you're having an iMessage conversation with someone.

16 Q. And is that type of information retrievable from the image
17 of a phone from the examination device?

18 A. If it still exists, yes.

19 Q. All right. Let's talk about some activity you did in this
20 case. Okay?

21 A. Yes.

22 Q. Showing you what's marked for identification as Exhibit
23 No. 103.

24 MR. MALLARD: May I approach, Your Honor?

25 THE COURT: Yes.

1 Q. Do you know what this is?

2 A. Yes, I do.

3 Q. What is it?

4 A. This is a USB drive that was prepared from our digital
5 forensic branch in Sterling, Virginia, and sent up here for
6 examination. This would have held data that was extracted from
7 a phone.

8 Q. And are you familiar with the device from which it was
9 extracted?

10 A. Yes, I am.

11 MR. MALLARD: May I approach again?

12 THE COURT: Yes.

13 MR. MALLARD: Exhibit 102, counsel.

14 Q. To the best of your knowledge, is that the data extracted
15 from Exhibit 102?

16 A. Yes, it is.

17 Q. Tell us about what you did with Exhibit 103.

18 A. So the data that was contained on this was handled in just
19 the same way that I explained to you earlier. Once it was
20 received and documented, the data was transferred over so I
21 could work on it. So I'm not going to work on -- I don't work
22 on any of the original evidence. It gets transferred over. I
23 check those digital fingerprints or hashes to make sure they
24 have remained the same. And then the particular data would be
25 entered in the Cellebrite Physical Analyzer program and sorted

1 out so that I could begin examining it.

2 Q. Did you verify the hash of the data on Exhibit 103 with
3 the information you received from the digital forensics branch?

4 A. Yes, I did.

5 MR. MALLARD: If I could have for the witness Exhibit
6 103.1.

7 Q. Is that the information to which you compared the hash?

8 A. Yes. It's a little hard to see at this point, but if we
9 look here, we have information at the top that basically -- if
10 we look at the different rows here, the third one down is the
11 IMEI, which is a 19-digit serial number. The next one down
12 would be the phone number that is associated with the device.
13 The device model is the actual model of the phone. In this
14 case it was an iPhone 8 Plus.

15 If we're able to go to the bottom of the page.
16 You've been hearing me talk about these hashes. So each time
17 you see it here, there's three hashes, the file system hash,
18 the memory hash, and keychain hash. A hash is really just a
19 series of numbers, but that is the digital fingerprint. That
20 number remains with that data no matter how many times you copy
21 it. If it doesn't change, it will always produce that same
22 hash time and time again.

23 Q. Did you verify the hash of Exhibit No. 103 with the
24 information that you had have received off of Exhibit 103.1?

25 A. Yes, I did.

1 Q. What was the result?

2 A. They were all the same.

3 Q. What did you do once you verified the hash?

4 A. Like I said before, once the hash is verified, the data
5 was input into the tool to be analyzed.

6 Q. Did you have a chance to analyze the data from that
7 particular device?

8 A. Yes, I did.

9 MR. MALLARD: And I'm going to ask for just the
10 witness, Madam Clerk, Exhibit 104.5.

11 Q. If you could zoom in on the bottom three columns there.
12 Do you know what this is, Exhibit No. 104.5?

13 A. Yes, I do.

14 Q. What is it?

15 A. So the tool that I used allows you to produce different
16 reports. So just different printouts of data that you may want
17 to, I guess, save in a form that's able to be looked at. So in
18 this particular case we're looking at a contact that was saved
19 in this particular phone here. So the first column, where it
20 says "contact" on the top --

21 Q. I'll stop you right there.

22 A. I'm sorry.

23 Q. Did you generate this document?

24 A. Yes, I did.

25 Q. Was this generated from the forensic image that we talked

1 about, Exhibit No. 103?

2 A. Yes, it was.

3 Q. Was it generated in a forensic process through the
4 Cellebrite examination?

5 A. Yes, it was.

6 Q. Does this document accurately reflect the content of the
7 phone for this particular inquiry?

8 A. Yes, it does.

9 MR. MALLARD: Your Honor, I would move Exhibit 105.1
10 into evidence.

11 MR. SULTAN: No objection.

12 THE COURT: Admitted.

13 (Government Exhibit 105.1 received in evidence.)

14 A. This is a Cellebrite extraction report. You can produce a
15 number of these depending on what you bookmark. So in the tool
16 I'll go through and I'll highlight things that I want to create
17 reports. This is one item that I bookmarked and then created
18 into a report.

19 Q. Let's just start at the top right there, where it says
20 "Tag," "Created," "Modified," do you see that on the top right?

21 A. Yes.

22 MR. MALLARD: If we could zoom in on that.

23 Q. Whose contact is this, or what does this information
24 reflect?

25 A. So this data is showing when I actually bookmarked it to

1 produce it into a report. That's when I did that. It
2 documents that date and time.

3 Q. This is your examination time?

4 A. The exam was started before then, but this is when I
5 actually created this particular report.

6 Q. I understand.

7 MR. MALLARD: Let's zoom out there and zoom in on the
8 bottom three columns there.

9 Q. What are we looking at here?

10 A. So we see three columns here. The first is contact. So
11 that's at the top. I know it's tough to see. It's the name of
12 "Trouble." That's the name that this particular contact would
13 have been saved at in the device. Under that, that whole long
14 listing is just the location of where that was saved on the
15 phone.

16 Q. And what's the next area over here, time-stamp?

17 A. The time stamp is the date and time that was given to that
18 particular artefact, so when that contact was created by that
19 device.

20 Q. And UTC negative five, what's that?

21 A. So most devices operate in a universal time. It used to
22 be called Greenwich Time. Now it's Universal Time. Here in
23 New England we are, depending on Daylight Savings Time, we are
24 five hours behind that time. So it says minus five. So
25 subtracting five hours to put it into our time zone here in the

1 Eastern time zone.

2 Q. What's the phone number -- I guess the larger question is,
3 this is a report of a specific contact from the device?

4 A. Yes, it is.

5 Q. What's the phone number that this contact is associated
6 with?

7 A. So if you look over in the right-hand side under entries
8 it's associated with phone number 617-704-2207.

9 Q. And that's the contact associated with the name Trouble?

10 A. Yes, it is.

11 Q. Did you have a chance to take a look through the device as
12 a general matter, the image, and see if there was any activity
13 with this -- well, first, what phone number was associated with
14 the device itself?

15 A. This particular device, I don't know if I have the number
16 in front of me. It was on a prior extraction report that we
17 looked at.

18 MR. MALLARD: If we could pull up Exhibit 103.1.

19 Q. Is the phone number for the device listed on this
20 document?

21 A. It is, yes. That would be listed where we see phone
22 number of 508-408-3998.

23 Q. That's the phone number of the device you were looking at?

24 A. That's correct.

25 Q. If we could go back to 104.5. Did you have a chance to

1 review the content of the extraction, the image that you were
2 looking at, for whether there was any -- essentially any
3 activity with that 2207 number associated with Trouble?

4 A. I did.

5 Q. And what was the result of your review for that?

6 A. I did not find any.

7 Q. There were essentially no pieces of activity between the
8 two?

9 A. That's correct.

10 Q. Let me ask you this question: Have you had a chance to
11 review the call detail records related to the 3998 phone?

12 A. Yes, I have.

13 Q. Based upon your review of those records, did you observe
14 contact between the 3998 phone and the 2207 phone?

15 A. Yes, I did.

16 Q. And would those contacts or the communications on the call
17 detail records have been reflected in the device as a general
18 matter?

19 A. Can I explain that?

20 Q. Yes.

21 A. Not to confuse -- I know we talked about a lot here.
22 Before we were talking about text messaging where iMessages
23 don't go through the cell phone provider. We're talking about
24 just phone calls here. So all phone calls do go through the
25 service provider. So in this particular case, I looked at call

1 records that were provided by the service provider that
2 documented this 2207 number as having had communication with
3 this phone.

4 Q. 3998?

5 A. Correct. I just don't want to get confused when we're
6 talking about messages and calls. Now we're talking about
7 actual physical phone calls.

8 Q. In the usual course, would the phone calls be reflected in
9 image for the 3998 phone that you were examining?

10 A. Yes. I would expect to see all of those in a call log on
11 the phone.

12 Q. Did you see them in the call log on the phone?

13 A. I did not.

14 Q. Why would they not be there?

15 A. Using the call detail records from the phone company in
16 comparison, the explanation for them not being on the phone
17 would be a user had deleted them from the call log on the
18 device.

19 MR. MALLARD: If I could turn to exhibit -- for just
20 the witness, Exhibit 104.2.

21 Q. What are we looking at here on this particular exhibit?

22 A. So this is the same exact report that we saw before. It's
23 just for a different contact. So in this case we have a
24 contact by the name of Darius in the upper left-hand corner.
25 This contact was created on January 6 of 2019, and the phone

1 number associated with that contact is 857-212-7918.

2 Q. Is this another contact report you generated from the
3 device?

4 A. Yes, it is.

5 Q. Does this accurately reflect the information obtained from
6 the device?

7 A. Yes, it does.

8 Q. I'd ask that this be moved into the -- moved into
9 evidence, Your Honor.

10 MR. SULTAN: Which one? What's the number, please?

11 MR. MALLARD: 104.2.

12 MR. SULTAN: No objection.

13 THE COURT: Admitted.

14 (Government Exhibit 104.2 received in evidence.)

15 MR. MALLARD: Can I publish it to the jury, please?

16 Q. For this particular contact, what's the name of this
17 contact?

18 A. Once again, it's Darius.

19 Q. All right. When was that created?

20 A. January 6 of 2019.

21 Q. What is the phone number for that particular call?

22 A. 857-212-7918.

23 Q. Did you have a chance to review the image, the 3998 phone
24 image, for any contact and activity with the 7918 phone number
25 here associated with Darius?

1 A. Yes, I did.

2 Q. What were the results of that review?

3 A. I found no communications.

4 Q. Did you have a chance to review call detail records
5 relating to the 3998 phone and review them with respect to
6 whether there was call activity with the 7918 phone?

7 A. Yes, I did.

8 Q. What was the result of that?

9 A. There were calls that were made between this phone and
10 that 7918 number.

11 Q. You did not find reflection of those calls on the physical
12 device you were looking at?

13 A. No, I did not.

14 Q. What would explain that?

15 A. Once again, a user would have had to remove that data from
16 this device.

17 MR. MALLARD: If I could have for the witness, Madam
18 Clerk, Exhibit 104.4.

19 Q. What are we looking at here, sir?

20 A. Once again, it's another contact report that I produced
21 using the Cellebrite tool.

22 Q. Is it an accurate report?

23 A. Yes, it is.

24 Q. What's the name of the contact for which this report
25 pertains?

1 A. This one is Puff, P-u-f-f.

2 MR. MALLARD: I'd move this into evidence, Your Honor,
3 as Exhibit 104.4.

4 MR. SULTAN: No objection.

5 THE COURT: Admitted.

6 (Government Exhibit 104.4 received in evidence.)

7 Q. If you could just explain what we're looking at in this
8 particular exhibit.

9 A. Once again, we see another contact. This one with the
10 name of Puff created on January 7 of 2019, and the phone number
11 attributed to that is 617-291-6983.

12 Q. Did you have a chance to review the device for
13 communications between the device and this particular phone
14 number?

15 A. Yes, I did.

16 Q. And there was some communications on the device; is that
17 fair to say?

18 A. Yes, there was.

19 Q. Did you have a chance to specifically review the device
20 for communication between the Puff contact ending in 6983 and
21 the phone 3998 that you were examining for the date of January
22 6, 2019?

23 A. For that specific date? There was a range of dates when
24 there was communication.

25 Q. But did you have a chance to review for whether there was

1 communications on just January 26, 2019?

2 A. Yes, I did.

3 Q. And was there any?

4 A. Not on that date, no.

5 Q. Did you have a chance to compare the call detail records
6 for the 3998 phone on January 26, 2019 with respect to whether
7 there were communications with the 6983 number associated with
8 Puff for January 26, 2019?

9 A. Yes, I did.

10 Q. And what was the result of that?

11 A. There were.

12 Q. And you didn't find reflections of those calls on that
13 date in the device?

14 A. No, I did not.

15 Q. What would explain that?

16 A. Once again, a user would have deleted that information
17 from the device.

18 MR. MALLARD: Now, if I could have just for the
19 witness, Your Honor, Exhibit No. 105. It's a little difficult
20 here, but if we could just continue down to the next page. The
21 next page.

22 Q. Sir, are you familiar with this being sort of a text
23 message conversation between the 6983 phone and the 3998 phone
24 that was recovered from the device?

25 A. Yes, I did produce a report that documented the text

1 messages between those two parties.

2 Q. Is this that record with sort of a large number of
3 redactions from it?

4 A. Yes, it is.

5 Q. Now, does this accurately reflect the item that you
6 retrieved from the device?

7 A. It does.

8 Q. And it looks like there's just the one entry here. We
9 have number 30. Do you see that?

10 A. I do.

11 Q. Does this item here, Exhibit 30, or item 30, accurately
12 reflect the information you extracted from the 3998 phone?

13 A. Yes, it does.

14 MR. MALLARD: Your Honor, I would ask that Exhibit 105
15 as redacted be moved into evidence.

16 MR. SULTAN: No objection.

17 THE COURT: Admitted.

18 (Government Exhibit 105 received in evidence.)

19 Q. What are we looking at here with respect to this
20 conversation?

21 A. This is an SMS message, or more commonly referred to as a
22 text message.

23 Q. Let's step back. SMS, what's that?

24 A. Short message service.

25 Q. Is that different than the iPhone-to-iPhone discussion we

1 were having before?

2 A. Yes. This goes through the phone service provider rather
3 than directly between the two users.

4 Q. Okay. So these are stored separately than the iPhone
5 communications to iPhone communications?

6 A. They are somewhat stored in the same database, but they're
7 categorized differently.

8 Q. Categorized differently?

9 A. Yes.

10 Q. So what are we looking at here in terms of content?

11 A. This is from -- obviously we're talking about the 3998
12 phone. This is a box. So this is an incoming text message
13 that came from the phone number of 617-291-6983, with a contact
14 name of Puff. This is created or sent on January 18, 2019 at
15 12:49 p.m.

16 Q. And is there a message associated with this text message?

17 A. Yes.

18 Q. What is the text message?

19 A. The message is, "You and Trouble don't have to hit me up
20 anymore. I'm good."

21 Q. And that is coming from Puff to the 3998 phone?

22 A. That's correct.

23 MR. MALLARD: If I could have just for the witness,
24 Madam Clerk, Exhibit 104.3.

25 Q. What is 104.3?

1 A. So this goes back to some of the contact reports that I
2 produced. It's another contact report. This time for a
3 contact under the name of Ma, M-a.

4 Q. And is this an accurate extraction of the information from
5 the cellular device you were looking at with the 3998 phone?

6 A. Yes, it is.

7 Q. Does it accurately reflect the information that you
8 observed on the phone?

9 A. It does.

10 MR. MALLARD: Your Honor, I move this into evidence as
11 Exhibit 104.3.

12 MR. SULTAN: No objection.

13 THE COURT: Admitted.

14 (Government Exhibit 104.3 received in evidence.)

15 Q. Tell us what we are looking at here, sir.

16 A. Once again, we see the contact name of Ma in the upper
17 left-hand corner. This particular contact was created on
18 January 26 of 2019 at 9:27 p.m., and it's attributed to the
19 phone number 617-704-1312.

20 MR. MALLARD: If I could have split screen with
21 Exhibit 94.2, please. Could you zoom in on the contact
22 information on the left side. And then we're going to zoom in
23 again on the right side, the phone number 1312. Let's go back
24 to just 104.3 in just one second. Now just back to 104.3.

25 Q. Now, "created date," what did that signify?

1 A. Yes. The date the contact was added to the user's
2 contacts or address book within their device numbers.

3 Q. Did you see any call logs or other activities between the
4 3998 phone and the number associated with Ma and that
5 particular contact?

6 A. Not on that date, no.

7 Q. If I could have for the witness, Madam Clerk, Exhibit No.
8 106. Well, first, if I could have Exhibit 144 for the witness.
9 Do you know what this is, sir?

10 A. I do.

11 Q. What is that?

12 A. This is subscriber information that's provided by AT&T.

13 Q. Do you know for what particular phone number it pertains
14 to?

15 A. Yes. This is for phone number 508-577-6720.

16 MR. MALLARD: Your Honor, I would move Exhibit 144
17 into evidence as self-authenticating, as described in the
18 government's trial brief.

19 MR. SULTAN: I'm sorry. I didn't hear the last part.

20 MR. MALLARD: I would move it in as self-
21 authenticating pursuant to the government's motion.

22 MR. SULTAN: I don't think it's self-authenticating,
23 Your Honor. I don't object to it, Your Honor. I don't think
24 it's self-authenticating.

25 THE COURT: Okay. So you're moving in 144?

1 MR. MALLARD: Yes.

2 THE COURT: He's not objecting. So it's admitted.

3 (Government Exhibit 144 received in evidence.)

4 Q. Do you know what this particular document is?

5 A. Yes. This provides subscriber information, if you were to
6 have a cellular device, the information that the company has on
7 file for that user.

8 Q. What's the phone number associated with this particular
9 subscriber information?

10 A. So when we look up top where it says "MSISDN," that's the
11 number associated, 508-577-6720.

12 Q. If you look down a little bit, do you see who the
13 subscriber is?

14 A. Yes. It's attributed to a Nancy Carter.

15 Q. What's the date of the start?

16 A. February 10 of 2019.

17 Q. What does that date mean?

18 A. The date that this particular cell phone service started.

19 MR. MALLARD: If we could zoom out for a second. If
20 we could capture down here the user information. I'm sorry,
21 the billing party as well.

22 Q. It's listed as the same Nancy Carter as well?

23 A. Yes, it is.

24 Q. That's for a phone number ending in -- what number does is
25 end in again?

1 A. It's 6720.

2 MR. MALLARD: For the witness, Your Honor, can I have
3 Exhibit No. 106?

4 Q. Sir, do you know what this is?

5 A. Yes, I do.

6 Q. What is it?

7 A. This is another extraction report I created documenting
8 text messages between two parties.

9 Q. And what parties was it between?

10 A. The 3998 device that we have here, and the phone number
11 that we just spoke about that's ending in 6720.

12 Q. And did you accurately extract it from the device that you
13 were examining?

14 A. Yes, I did.

15 Q. And does this report accurately reflect all of the content
16 in that conversation between the 6720 phone and -- I'm sorry,
17 between the 3998 phone and the 6720 phone?

18 A. Yes, it does.

19 MR. MALLARD: Your Honor, I would ask this be moved
20 into evidence as Exhibit 106.

21 MR. SULTAN: No objection.

22 THE COURT: Admitted.

23 (Government Exhibit 106 received in evidence.)

24 MR. MALLARD: If we could just start off at the top
25 here. Let's do the whole from the number sign all the way down

1 to the bottom portion.

2 Q. So what's the first entry in this series of text messages?

3 A. So if we look at where it says "Party" in the second
4 column, it's going to say the phone number that sent this
5 message. So in this case it's the one ending in 6720. It's an
6 incoming message. So it came into this person's phone. The
7 next column over shows the date and time.

8 Q. And what time does it say?

9 A. February 13 of 2019 at 1:15 p.m.

10 Q. And what's the message that was sent?

11 A. The content of that message is, "Yo Bro. This Trub."

12 Q. Let's go to the next column and stop you on this area I
13 highlighted. What does that row signify?

14 A. The second message in this report.

15 Q. And there's some information over here that I'm
16 highlighting. What's that?

17 A. That is the date and time that I bookmarked this item to
18 be placed in the report.

19 Q. So that's your time and date?

20 A. Yes.

21 Q. The time and date of the actual content is below where it
22 says "All time stamps"?

23 A. In the third column from the left, yes.

24 Q. Okay. What's the next message?

25 A. The next message is just a few seconds later. It's an

1 incoming message, and it says, "This is my trap jack."

2 Q. And it's from the same 6720 number?

3 A. All of these would be, yes.

4 Q. Let's go to the next text message. What's the next
5 message?

6 A. This message is, once again, on February 13 at 1:16 p.m.,
7 and this message is incoming, and reads, "Yo, I need like 200.
8 If you can add that to the 100, so I can go half on this rental
9 so that I can go out of town."

10 Q. What time was that, again?

11 A. At 1:16 p.m.

12 Q. From the same phone number, 6720?

13 A. Yes.

14 MR. MALLARD: Scroll down. Thank you.

15 Q. And what is the next message and who's it from?

16 A. This is the first outgoing message we see. So this is
17 going from the 3998 phone back to this 6720 phone. This is a
18 few hours later at 5:46 p.m., and that message says, "I don't
19 have it, bro."

20 Q. And is there a response?

21 A. There is a response a few minutes later. So it's an
22 incoming message that says --

23 MR. MALLARD: Can we continue on? Oh, sorry. Yeah,
24 right there.

25 Q. What's the next message?

1 A. We now have an incoming message at 5:50 p.m.

2 Q. From the 6720 number?

3 A. Yes. That says "What you been up to?"

4 Q. What's the next message?

5 A. It's also another incoming message. And that one is just
6 a few seconds later, and it says "Been doing shows and in the
7 studio."

8 Q. Okay.

9 MR. MALLARD: Let's continue on.

10 Q. What is this one, number 8?

11 A. This is now an outgoing message being sent.

12 Q. From the 3998 phone?

13 A. Yes, at 5:28 p.m. and it says --

14 Q. I'm sorry. You said, is that 5:50:28 p.m.?

15 A. 5:50 and 28 seconds p.m., yes.

16 Q. What's the message there?

17 A. It says, "Shit going through it."

18 Q. All right. Let's continue on. What's the next message?

19 A. So this is now an incoming message on the same day at
20 5:51 p.m., and it reads "Damn."

21 Q. And the next message?

22 A. It's another incoming message. It's about a minute later
23 that says "That's crazy."

24 Q. And the next?

25 A. This is now an outgoing or sent message at 5:52 p.m. that

1 says, "Yeah, tell me about it."

2 Q. The next one?

3 A. This is now an incoming message that's a little over a
4 minute later that says, "Nothing new."

5 Q. Let's keep going.

6 A. This is now an outgoing or sent message at 5:34 p.m.,
7 which is just a couple minutes later. This says, "Nothing."

8 Q. All right. Then we can quickly go through the rest of
9 these text messages.

10 A. Sure. It's an incoming message a couple minutes later
11 that says, "Yeah, IMU, bro," sometimes short for I miss you.

12 MR. SULTAN: I object to the interpretation, Your
13 Honor. It says what it says.

14 THE COURT: Sustained.

15 Q. Were you done?

16 A. The next is an incoming message at -- we've now changed
17 dates on February 26 at that 11:33 a.m. And it says "I was in
18 the broke."

19 Q. That's from the 6720 number?

20 A. Yes. They all are.

21 Q. Let's keep going.

22 A. It's another incoming message just seconds later that
23 says, "I was gonna tell you to pull down on me."

24 Q. Keep going. I think that's the end of it. Is that
25 correct?

1 A. Yes.

2 Q. All right. I'd like to switch gears a little bit here and
3 take us out of sort of the individual calls. Did you have a
4 chance to review the device and its activity from the period of
5 about 4:08 p.m. to 11:54 p.m. on the date of January 26, 2019?

6 A. Yes.

7 Q. And did you review the call logs of that particular phone
8 for that same period?

9 A. Yes, I did.

10 Q. Did you observe call detail activity taking place for that
11 phone?

12 A. Not located within the device, no.

13 Q. Did you locate it on the call detail records?

14 A. Yes, I did.

15 Q. What conclusion can you draw from that?

16 A. That a user deleted that data from the device.

17 Q. I'm going to ask you a couple general questions about the
18 phone, the device as well.

19 A. Okay.

20 Q. Did you have a chance to query the phone for any entries
21 or data associated with a Terrell Jackson?

22 A. Yes. I was given a number of phone numbers and names to
23 query, and that was one of them.

24 Q. Was there any information related to a Terrell Jackson in
25 the phone?

1 A. No, there was not.

2 Q. What about with the 781-924-9114 number?

3 A. There was not any data.

4 Q. What about any name or association with a Dennis Martin?

5 A. No, there was not.

6 Q. And what about with a phone number -- any entries, data or
7 information or activity associated with an 857-719-8349 phone
8 number?

9 A. There was not.

10 Q. I'm going to draw your attention to some different
11 activity.

12 A. Okay.

13 Q. Did you have a chance to do some other activity in this
14 case?

15 A. Yes, I did.

16 Q. What was that?

17 A. I was able to review some Google search warrant return
18 records.

19 Q. Tell us a little bit about Google, what it does and what
20 the company is.

21 A. Google is a massive company that is -- basically it has
22 its hands in a number of tech industries. I'm sure many of you
23 all know it as a search engine. So you can Google something
24 and search with it on the Internet, but it also produces
25 hardware. It produces software. It maintains a website. And

1 in doing many of these things, it collects data on users and
2 houses it. In addition, they also have other very popular
3 applications, such as Gmail for emailing, and other
4 communications.

5 Q. And is this all user specific and based upon certain
6 accounts that you just create?

7 A. Yes. So anything that's housed within Google is attached
8 to that person's Google account.

9 Q. What kind of data does Google store about individuals?

10 A. More than you probably think they do. It depends on
11 settings that the user can define, but in particular it houses
12 all -- all emails are housed in Google servers when you log in
13 through the Internet. You're actually looking onto their
14 servers where they house the emails. It saves any searches
15 that you may do in search engines, and it saves search history,
16 as well as visit history, sites that have been visited.

17 Q. How about email?

18 A. Yes. I mentioned it does save all that email.

19 Q. I guess what I'm saying is in terms of outgoing and
20 incoming?

21 A. Yes. It houses -- when you log into your email --
22 everything you see there is actually being housed by Google.
23 It's not locally on your computer. It's on their servers.

24 Q. Does Google store and keep that information accurately, in
25 your experience?

1 A. They do, yes.

2 Q. How many times have you had the chance to review Google
3 data in the course of your duties as an ATF special agent?

4 A. Over a hundred times.

5 Q. And what's the manner by which Google data is obtained
6 from the law enforcement perspective?

7 A. Normally a law enforcement agency will apply for and get a
8 search warrant for that data, serve it to Google, and then
9 Google will respond to that search warrant with whatever it
10 specifically asks for.

11 Q. Is it usually delineated by a certain account name?

12 A. It is, yes.

13 Q. In your experience, what types of things has Google kept
14 and produced to you in response to those various search
15 warrants that you've obtained and worked on?

16 A. The most common things that we see when we ask for that
17 data is emails, Internet activities, search histories, photos.
18 There are other types of data that are kept, but we don't see
19 it as commonly as these categories.

20 Q. The information that Google provides, in your experience
21 has it been accurate?

22 A. Yes, it has.

23 Q. And to the best of your knowledge, does Google keep this
24 information in the course of its regular business?

25 A. Yes, it does.

1 Q. What's the process that you go through when you get this
2 data back from Google? How do you start that process?

3 A. Google normally provides that data in either a link that
4 you can download or a physical copy of it that they send you.
5 That data comes with a cover letter that, once again, goes back
6 to those hashes, those digital fingerprints that will list each
7 of the files they're giving you and the digital fingerprint,
8 and we will receive some sort of container, sometimes called a
9 zip container, where they take a bunch of file and put it into
10 one kind of file that you have to open up. We will receive
11 that data, open that container and the first thing we'll do is
12 check that hash to make sure it matches.

13 Q. Sort of in the same way you talked about with the phones?

14 A. Exactly the same way.

15 Q. Is the hash information by file?

16 A. It is, yes.

17 Q. So Google produces a series of files for different
18 accounts, each of them is hashed?

19 A. Yes.

20 Q. And then they're put into a sort of zip file container?

21 A. Yes.

22 Q. And that's how they are transmitted to law enforcement?

23 A. Yes.

24 Q. How does Google identify the hash for each item?

25 A. They use a hashing tool, just as we do. Then they

1 document that hash in a cover letter that's given along with
2 the data.

3 Q. Okay. So there's a cover letter that explains it?

4 A. Yes.

5 Q. I'm going to --

6 MR. MALLARD: Your Honor, may I approach?

7 THE COURT: Excuse me.

8 MR. MALLARD: May I approach?

9 THE COURT: Yes.

10 MR. MALLARD: Exhibit 111, counsel.

11 Q. Sir, I'm showing you what's been marked as Exhibit 111.
12 Are you familiar with what that is?

13 A. Yes I am.

14 Q. What is it?

15 A. This is a CD that contains Google warrant return data for
16 a particular account.

17 Q. Do you know the account that it pertains to?

18 A. Yes. It's a diormauricecarter.

19 Q. @gmail.com?

20 A. That's correct, yes.

21 MR. MALLARD: I'm going to ask this be marked for
22 identification as Exhibit 111, Your Honor.

23 THE COURT: Okay.

24

25 (Government Exhibit 111 received in evidence.)

1 Q. Have you had a chance to review Exhibit No. 111 and its
2 content?

3 A. Yes, I have.

4 Q. Did you process it in the manner that you frequently
5 process items forensically?

6 A. Yes, I did.

7 Q. How did you do that?

8 A. In this particular case I used a tool by Magnet Forensics.
9 The data that's given in Google warrants are in text files. So
10 it's almost like a Word document. There's just lots and lots
11 of data. And it's very tough to look at that data with your
12 human eyes and differentiate it. This tool that I use takes
13 this data and puts it in a format where I can place it into a
14 spreadsheet and sort it and look at it in a way that's easier
15 on the eyes.

16 Q. Did you forensically hash that data before you looked at
17 it?

18 A. Yes, I did.

19 MR. MALLARD: If I could have for the witness Exhibit
20 111.1.

21 Q. Do you know what this is?

22 A. Yes, this is a cover lettered that's provided by Google
23 when they provide warrant return data to us.

24 MR. MALLARD: If you could turn to the second page.
25 And the third page.

1 Q. What's on the third page there?

2 A. This is a listing of the files that they included, and the
3 particular hashes for each of the files.

4 Q. Is that the hash information that you used to verify the
5 integrity of the data on Exhibit 111?

6 A. Yes, it is.

7 Q. Tell us about what you did once you got Exhibit 111
8 verified.

9 A. So once I verified this data to make sure it was accurate,
10 I imported it into a tool that's called Axiom by Magnet
11 Forensics, and that tool, once again, lets me take that data,
12 sort it, and do keyword searches if need be.

13 Q. First, among that data on 111 would be some what we
14 term -- sorry.

15 Among that data, was there something that would be
16 referred to as subscriber information?

17 A. That is one of the files they sent, yes.

18 MR. MALLARD: If I could have Exhibit 112 for the
19 witness, please.

20 Q. Do you know what this is, sir?

21 A. Yes.

22 Q. What is it?

23 A. This is the text file that has the account information for
24 the account of -- and if you look at the top, it's listed as
25 diormauricecarter.

1 Q. Is this the information you received from the Google
2 search production on Exhibit 111?

3 A. Yes, it's one of the files.

4 Q. And this is an accurate version of it?

5 A. Yes, it is.

6 MR. MALLARD: If I could have this admitted into
7 evidence, Your Honor, Exhibit 112.

8 MR. SULTAN: No objection.

9 THE COURT: Admitted.

10 (Government Exhibit 112 received in evidence.)

11 Q. What are we looking at here in terms of the information
12 that's now before the jury?

13 A. This is the Google subscriber information, so the
14 information they retain when someone created their Gmail
15 account that associates with all the Google suite products.

16 Q. Okay. What are some of the points of interest along here
17 in the account?

18 A. We see the name that was entered by the user when they
19 created the account, and that's Dior Carter. Under that we see
20 the email address associated with that user, which is
21 diormauricecarter@gmail.com. We see different services that
22 they belong to that Google suite, the data is kept on, such as
23 Gmail, location history, web and app activity, and YouTube. It
24 shows a date created for this account, November 16, 2018. Then
25 if we drop down, we see a line that says SMS and then a phone

1 number. That phone number is 617-704-2207. This is a phone
2 number associated with the account. A lot of times providers
3 ask you for your phone number when you subscribe as part of
4 authentication. So if someone else tried to log into your
5 account, they would ask to send a text message to a particular
6 device so you could authenticate that you're the actual user of
7 the account, and that's the number they have on file for that.

8 MR. MALLARD: If I could have Exhibit 113 for the
9 witness, please.

10 Q. Sir, what's this?

11 A. This is one of the emails that was found within the data
12 that Google provided.

13 MR. MALLARD: If we could zoom in on the top there.

14 Q. What's the date of the email?

15 A. This is January 16, 2019.

16 Q. Who's it from?

17 A. This is from the email address of ordersummary
18 @ticketsatwork.com.

19 Q. And who's it to?

20 A. This is to diormauricecarter@gmail.com.

21 Q. Is this an accurate copy of the email that you received
22 from diormauricecarter Google extraction?

23 A. Yes, it is.

24 MR. MALLARD: I move this into evidence, Your Honor,
25 as Exhibit 113.

1 MR. SULTAN: No objection.

2 THE COURT: Admitted.

3 (Government Exhibit 113 received in evidence.)

4 MR. MALLARD: If I could have Exhibit 113 and also
5 Exhibit 80.1.

6 Q. If I could draw your attention, sir, to the confirmation
7 number there on the email on the left.

8 A. Yes.

9 Q. Do you see it there?

10 A. Yes, I see a confirmation of H9131656981.

11 Q. I'll highlight the one on the right there.

12 A. And that is the same exact number.

13 MR. MALLARD: Okay. If I could have Exhibit 114 for
14 the witness, please.

15 Q. What are we looking at here, sir?

16 A. This is another email that was retrieved from the Google
17 warrant return data.

18 MR. MALLARD: And this is already in evidence, Your
19 Honor, so can I have this published to the jury?

20 THE COURT: Sure. You did not move the admission of
21 111 or 111.1, right?

22 MR. MALLARD: I did not, Your Honor.

23 THE COURT: Okay.

24 MR. MALLARD: This is for the jury.

25 Q. What is this, sir?

1 A. This is another email.

2 Q. Is this an email you obtained from the account for the?
3 diormauricecarter@Gmail?

4 A. Yes, it is.

5 MR. MALLARD: If I could have Exhibit 115, which is
6 also already in evidence.

7 Q. What are we looking at here, sir?

8 A. It's another email that I retrieved from the Google
9 warrant return data.

10 Q. Can you explain the times we have up there for Friday,
11 January 25, 2019, what the 0800 means?

12 A. I'm not exactly sure how they keep their dates on here.
13 I'd have to compare it to the data. I'm sorry on that one.

14 Q. Okay. But it looks like there's a time, and then there's
15 an offset?

16 A. There's an offset. Normally that would offset just like
17 Eastern Standard Time. They're saying they're offsetting it by
18 eight hours. I haven't had a chance to check this, but that's
19 normally what we'd see on this.

20 Q. So the time of 09 would reflect an eight-hour offset as
21 opposed to a five-hour offset for Eastern Standard?

22 A. That's what it normally stands for, yes.

23 MR. MALLARD: Now, I'm going to ask you for just the
24 witness, Madam Clerk, Exhibit No. 116.

25 Q. Are you familiar with what this is, sir?

1 A. I am, yes.

2 Q. What is it?

3 A. So this is one of the text documents that's received from
4 the Google return. And this one is particular to searches.

5 Q. And is this sort of the raw data that was received from
6 Google?

7 A. It is, yes.

8 Q. This is before you put it into your tool?

9 A. Yes.

10 Q. What does it contain?

11 A. This particular case we see sites that were visited, terms
12 that were searched for, and images that were viewed.

13 Q. How is this information that is captured on this raw
14 document, 116, generated?

15 A. This is generated from the data that Google houses and
16 generated in a text file.

17 Q. Generated automatically by Google by their servers?

18 A. It is, yes.

19 Q. So there's no one punching away to store the information?

20 A. No. This is all automated.

21 Q. So it's computer generated as well?

22 A. It is.

23 Q. And stored as well at the time these were created?

24 A. Yes.

25 Q. And this is the stuff that you get that you put into your

1 program?

2 A. It is, yes.

3 MR. MALLARD: If I could have 116.1 for the witness.

4 Q. Are you familiar with what this document is?

5 A. Yes, I am.

6 Q. What is it?

7 A. So this is that same data set. It's just been placed in a
8 spreadsheet that makes it easier to search and view.

9 Q. There's also some redactions in there as well?

10 A. There are, yes.

11 Q. Let's talk about the different column headings and what
12 they mean.

13 A. Yes. Can we zoom in on the column heading at the top?

14 Q. First, I'll have to lay a foundation for them to be in
15 evidence.

16 A. I just couldn't read it the way it was.

17 Q. That's fine. Does Exhibit 116.1 accurately reflect the
18 content of Exhibit No. 116 that was received from Google,
19 barring, of course, the redactions and information that's not
20 contained?

21 A. Yes, it does.

22 Q. How do you know that?

23 A. Because I created this from that data.

24 Q. And did the tool that you use -- does the tool that you
25 used accurately generate this format of that underlying data?

1 A. It does, and I also compare the raw data to this to make
2 sure that it's transferred over properly.

3 MR. MALLARD: Your Honor, I ask to move 116.1 into
4 evidence.

5 MR. SULTAN: No objection.

6 THE COURT: It's admitted.

7 (Government Exhibit 116 received in evidence.)

8 Q. Tell us about the information that's stored here for
9 116.1.

10 A. This is the same information I spoke of before. It's from
11 Google search history, Internet history, and that includes the
12 term searched for, sites visited and images viewed.

13 MR. MALLARD: Let's go all the way down to the 36th
14 page, please. Can we zoom in on the bottom there. Two above
15 that, please. And can we go all the way to -- that's great.

16 Q. What are we looking at here, for example? Can you explain
17 what these columns show?

18 A. Yes. The first column on the left is just the line item.
19 It gives us a number when we're talking about a row to specify
20 it.

21 The next column is the date and time that that
22 artefact was created. This has been adjusted for Eastern
23 Standard Time. The third column is the type of search, whether
24 it was a search, a site visited or image viewed. And the
25 fourth column on the right-hand side that we see magnified here

1 is what was searched for or the site that was visited.

2 Q. Tell us what was searched for on numbers 1019 and 1020.

3 A. So it was a typed-in search for Xtreme Rentals, Brockton,
4 Mass.

5 Q. Then what about 1020?

6 A. The same.

7 Q. Let's go down to the next entry. What was searched for
8 there?

9 A. Once again, on January 26, 2019 we see a new search this
10 time for a search for T-Mobile near me.

11 Q. That's entry 1022?

12 A. It is, yeah.

13 Q. Let's go to the next page. Can we zoom in on the
14 first six -- five entries there. What are we looking at here?

15 A. So we're looking at rows 1023 through 1027 on January 26
16 of 2019 and all they are all searches for T-Mobile near me.

17 Q. Are they all different times?

18 A. Yes.

19 Q. What does that mean?

20 A. There were multiple searches for that same search term of
21 T-Mobile near me.

22 MR. MALLARD: Let's zoom out there. Skip over --
23 let's go to the next four.

24 Q. What are we looking at here?

25 A. We're looking at rows 1029 to 1032 on January 26, 2019,

1 and they are more searches for T-Mobile near me.

2 MR. MALLARD: If we could close that down. Let's go
3 to the one at 1040 -- this one there.

4 Q. What's being searched for there at 1041?

5 A. Row 1041 on January 26 is a search for Hertz Rental Car,
6 30 Park Plaza, Boston, Mass.

7 MR. MALLARD: Let's now blow up the next series of
8 searches going forward. Let's start here at 1045.

9 Q. What's being searched for there?

10 A. So here, once again, on January 26 we're seeing a visited
11 site. So the site that was visited here was Universal Hub.

12 Q. How about the next site below that?

13 A. Enterprise News.

14 Q. When was that searched for?

15 A. So in row 1046, that was on January 26, 2019 at 9:19 p.m.

16 Q. Are you familiar with the Enterprise News website?

17 A. I am, yes.

18 Q. What is it?

19 A. It's a --

20 MR. SULTAN: Objection, Your Honor.

21 THE COURT: Basis, foundation?

22 MR. SULTAN: He's just reading the record, Your Honor.
23 He's not interpreting them. Saying what the entries mean --

24 THE COURT: If he can lay a foundation for it, he can
25 have it.

1 Q. Have you ever visited enterpriseneews.com?

2 A. I have.

3 Q. Do you know what it is?

4 A. I do.

5 Q. What does it pertain to?

6 A. It is a website that hosts local news in the Brockton
7 area.

8 Q. What about Exhibit 1047?

9 A. That would be a visit to that same site just to a -- if we
10 look to the right of the enterpriseneews.com website, we see
11 it's under the news category and under the category of crime.

12 Q. What about the next entry?

13 A. The same site visited again just 20 minutes later.

14 Q. Okay.

15 MR. MALLARD: Let's continue on.

16 Q. Sir, what are we looking at here?

17 A. So, once again, we're in rows 1054 through 1060. These
18 start on January 26 and go into January 27, but these are sites
19 either searched for or visited.

20 Q. There's a search here at 10:17 p.m. on January 26, 2019?

21 A. Yes. That's in row 1055.

22 Q. It's for a Twitter site, is that right, Stacos?

23 A. That's correct, yes.

24 Q. There's additional searches that keep going, is that fair
25 to say?

1 A. There is.

2 Q. Are you familiar with what's known as a pattern of life
3 analysis?

4 A. Yes.

5 Q. What does that mean?

6 A. That's where an investigation we will either follow
7 someone physically to see what they do in their day to
8 establish a pattern of life, or with digital means, we can look
9 at the usage that they commonly have on their devices to see
10 what their normal routine would be on that device.

11 Q. In terms of this particular set of documents, why don't we
12 scroll back to probably the tenth page in. You said there was
13 a search there around that time for twitter.com/stacos, right?

14 A. There was, yes.

15 Q. There was also searches for Universal Hub. There was also
16 a search for universalhub.com?

17 A. Yes, I'm familiar with that site too.

18 MR. MALLARD: Let's keep going down.

19 Q. If we go back up to November 30, item 256, do you see that
20 there?

21 A. If you could zoom in, that would be great. Row 256 is a
22 visit to that Twitter with Stacos again.

23 Q. Okay. Let me see if I can find some more here. Stand by.
24 If we could go to number 6 -- I'm sorry -- 559 and 560. Do you
25 see some activity there?

1 A. We see that same Twitter site accessed two more times in
2 December of 2018.

3 Q. How about 560?

4 A. So we're talking about 559 and 560.

5 Q. Let's go down to 561.

6 A. In 561 we see a search for Universal Hub in December of
7 2018.

8 Q. If we go to 700 -- I'm sorry 698, 699, 700 and 701.

9 A. So in rows 698 through 701 we see searches and sites that
10 were visited in January of 2019, both for that same Twitter
11 Stacos site and Universal Hub.

12 Q. Can we go to 898, 899, 900 and 901. What are we looking
13 at here?

14 A. So in rows of 898 through 901 we're looking at the January
15 16 date, and we see sites that were searched for and visited.

16 Q. Can we go to row 908 and 909. What are we looking at
17 here?

18 A. We're looking again at 908 and 909 on January 16, and we
19 see a searched for and visited site for Tickets At Work.

20 Q. Can we go to 942 through 951, please.

21 A. So in 942 through 951 we're going from January 19 of 2019
22 through January 21 of 2019, but we see searches and sites
23 visited for Universal Hub, bpdnews and tire shops near me, as
24 well as a Hertz Rental Car, 30 Park Plaza, and Goodyear.

25 Q. Have you had a chance to review the entirety of the search

1 history without the redactions?

2 A. I have, yes.

3 Q. Have you had a chance to review it for when the term
4 T-Mobile was searched for?

5 A. Yes.

6 Q. When was the first time throughout the entirety of this
7 data set that T-Mobile was searched for?

8 A. That was on January 26.

9 Q. Is that the only date in which it was searched for?

10 A. Yes.

11 Q. Did you do other permutations of T-Mobile?

12 A. I did. I used the word "mobile," which would capture if
13 it was T hyphenated or T-Mobile, and those were the hits that
14 came up.

15 Q. This range of documents spans from the first page, which
16 is on what date, on the first page, which is -- it looks like
17 November 15, 2018?

18 A. That's correct.

19 Q. And what's the last page of records?

20 A. That would be February 2, 2019.

21 Q. Okay. Did you have a chance to search for when the first
22 instance of the enterpriseneeds.com was ever searched for on in
23 this particular account history?

24 A. I did, yes.

25 Q. When was that?

1 A. January 26.

2 Q. At that 9:19 p.m. entry that we discussed?

3 A. That's correct.

4 Q. That was the first time Enterprise was ever visited?

5 A. Yes.

6 MR. MALLARD: I have no further questions for this
7 witness, Your Honor.

8 THE COURT: How long do you think you have,
9 Mr. Sultan?

10 MR. SULTAN: I'm sorry, Your Honor, probably ten or
11 fifteen minutes.

12 THE COURT: Let me check with the jury.

13 Ten or fifteen minutes, is that all right with
14 everyone? Sure?

15 Go ahead.

16 Did I hear an objection over there? That's fine.

17 MR. SULTAN: Okay?

18 THE COURT: Yup.

19 MR. SULTAN: Thank you.

20 CROSS-EXAMINATION

21 BY MR. SULTAN:

22 Q. Good afternoon, Special Agent Kelsch.

23 A. Good afternoon.

24 Q. You told us that Google collects information on its users,
25 right?

1 A. Correct.

2 Q. So everybody who clicks on a Google icon on their
3 computer, Google is saving what happened next, right?

4 A. That depends.

5 Q. Well, they collect data on -- it depends on what?

6 A. So when you are either on your computer or on your mobile
7 device, you can be signed into your Google account. So it
8 depends whether or not you are signed into your Google account.
9 I could go into your computer and not sign in, and it wouldn't
10 save that data on my account because I wasn't signed in.

11 Q. So if you went onto my Google account, that search would
12 come up under my name, right, not yours?

13 A. If you were logged in, yes.

14 Q. Okay. And people have -- can get to their Google account
15 from all kinds of devices, right?

16 A. They can, yes.

17 Q. Laptop computers?

18 A. Correct.

19 Q. Desktop computers?

20 A. Correct.

21 Q. Mobile phones?

22 A. Yes.

23 Q. Gaming consoles, like PlayStations and Xboxes?

24 A. Some do allow for web browsing and some don't. It depends
25 on the console.

1 Q. As long as somebody is logged into their Google account,
2 anybody who goes on to that device and searches for something
3 is going to come up under the name of the subscriber, right?

4 A. As long as you are logged into that account, it would be
5 attributed to that account, yes.

6 Q. Okay. So all you can tell us is the name of the account
7 that those searches were made on, right?

8 A. That's correct.

9 Q. You can't tell us who was using that account when any
10 particular search was made, can you?

11 A. I'm not able to directly state that, no.

12 Q. In fact, the records that you got from Google, they don't
13 even tell you what device was accessed at the time that search
14 was made, do they?

15 A. Those do not.

16 Q. You can't tell us that information about any of those
17 searches that you just testified to on direct examination, can
18 you?

19 A. They do not have that data, no.

20 Q. Now, someone is logged into a subscriber's account.
21 Google will collect data on every single search that person
22 makes, right?

23 A. Yes.

24 Q. And you used the phrase or the prosecutor asked you about
25 something, pattern of life investigation, right?

1 A. Yes.

2 Q. That's when you as an agent can look at all the searches
3 that a citizen is making over a period of months and kind of
4 try to figure out like what they are interested in, stuff like
5 that?

6 A. Sure. Yes.

7 Q. Pattern of life is kind of a fancy name for that kind of a
8 search, right?

9 A. It would be, for example, if someone's habits every day
10 were to get up at 8:00 a.m. and check a particular site every
11 morning, we would see that as pattern of life, and we would
12 expect to see that every day, yes.

13 Q. And you've been doing this for a bunch of years, right,
14 looking at this kind of data?

15 A. Yes, I have.

16 Q. Looking at people's search histories, right?

17 A. Yes, I have.

18 Q. It's not unusual for people to check out news websites, is
19 it?

20 A. It is not.

21 Q. People do that every day all the time multiple times,
22 right?

23 A. Certain people do, yes.

24 Q. Many people do. Is that fair to say?

25 A. Very fair, yes.

1 Q. There's nothing particularly suspicious or sinister about
2 somebody checking out a news site, whether it's the Boston
3 Globe or the New York Times or the Brockton Enterprise, right?

4 A. No, not suspicious unless it has to do with particular
5 timing in the case.

6 Q. Ah.

7 Well, in this case you got the search history from
8 Google, right?

9 A. Yes, I did.

10 Q. And that search history that you got was -- you got part
11 of November 2018? Right?

12 A. Correct.

13 Q. And you got all of December of 2018, right?

14 A. That was included in part of it, yes.

15 Q. And you got all of January of 2019, right?

16 A. Yes.

17 Q. And you got a little bit of February of 2019, right?

18 A. That is correct.

19 Q. Okay. And so on this account, you've looked at the search
20 history, right?

21 A. I did, yes.

22 Q. There were searches on news sites in November of 2018,
23 right?

24 A. Yes, there were.

25 Q. The jury saw some of them a few minutes ago, right?

1 A. They did, yes.

2 Q. There were searches on news sites during December of 2018,
3 right?

4 A. There was, yes.

5 Q. There were searches on news sites in January of 2019,
6 right?

7 A. There were, yes.

8 Q. There were searches on news sites in February of 2019,
9 right?

10 A. For those two days. I don't have a specific memory if
11 there were, but there may have been.

12 Q. Okay. So the pattern of life of the person or persons who
13 were using that particular site on whatever devices they were
14 using them on, they had a pattern of looking at news sites.
15 Was that part of their pattern of life, Agent Kelsch?

16 A. It was, yes.

17 Q. Now -- and that's not an uncommon pattern of life, right?

18 A. It is not.

19 Q. Now, let me just ask you about a couple of other things.
20 You've been trained in Google and searching Google phones,
21 right? Is that something you do? Android phones.

22 A. Yes, I have.

23 Q. And you told us that Google collects a lot of information
24 about its users, right?

25 A. They do.

1 Q. Okay. And one of the things that Google collects on its
2 users from mobile devices like Android phones is specific
3 location information; isn't that right, Special Agent Kelsch?

4 A. In this particular case, it was an iPhone, but do you want
5 to talk about Android phones?

6 Q. I'm asking you a question about technology. I don't know
7 what phone you're referring to. We're talking about Google
8 right now. Okay?

9 A. Yes.

10 Q. Okay. Google collects specific location information from
11 Android phones and keeps it in something called Sensorvault.
12 Are you familiar with that?

13 A. So they may collect that, if it's enabled in the phone.

14 Q. So if I've got an Android phone and location is enabled,
15 Google is collecting -- and this is GPS, right?

16 A. It will collect GPS data, yes.

17 Q. Google is collecting precise GPS information on where that
18 phone goes 24/7, right?

19 A. It's setting dependent. So the user would have to have
20 those settings turned on. But if they are turned on, yes, it
21 can collect that data. It's not continuous data. It's
22 continuous data that's linked to certain artefacts in the
23 phone. So it's not following you 24 hours a day, but if you
24 were to do certain things --

25 Q. Like move from one room to another?

1 A. Not that specific, no.

2 Q. Move from one street to another?

3 A. Not on movement.

4 Q. Well, what is it tracking then?

5 A. It tracks certain artefacts.

6 Q. What's an artefact?

7 A. So an artefact is if we're looking on a device, an
8 artefact is any type of data that we can glean off of any
9 little piece of data.

10 Q. Well, is movement one of the artefacts that Google
11 collects on people?

12 A. No.

13 Q. Well, how is it collecting GPS location information if
14 it's not collecting GPS location information?

15 A. So, for example, if you were using Google maps going from
16 one location to another, then, yes, it has some GPS tracking.
17 Other times it would collect is if you did a specific search or
18 took a photograph and had that enabled, it would. But the
19 phone by no means follows you 24 hours a day wherever you go.
20 Those points have to be attributed to an artefact. So you do
21 something on the phone that captures that location at that
22 time. It's not continuous.

23 Q. And Google saves that stuff, right?

24 A. If those things are turned on, then yes.

25 Q. Okay. So just one last subject. I don't want to keep

1 anybody.

2 You talked about some information that was deleted
3 from this phone that you did an extraction on, right?

4 A. Yes.

5 Q. And based on your long experience doing this kind of work,
6 is it fair to say that people often delete stuff from their
7 phones?

8 A. I'd say I see some people that delete continuously, and
9 some people that never delete. It ranges the entire gambit
10 between each.

11 Q. But plenty of people delete stuff from their phones,
12 right?

13 A. Some people do, yes.

14 Q. For all kinds of reasons, right?

15 A. I can't guess as to their reasons, but people delete from
16 their phones.

17 Q. It happens all the time, right?

18 A. It does.

19 Q. Thank you, Special Agent.

20 MR. SULTAN: No further questions, Your Honor.

21 MR. MALLARD: Very briefly.

22 REDIRECT EXAMINATION

23 BY MR. MALLARD:

24 Q. Sir, we talked about Google and other persons using Google
25 accounts on cross there.

1 A. Yes.

2 Q. Google accounts are password protected, right?

3 A. They are, yes.

4 Q. How long does the password remain active before it needs
5 to be reentered on various devices?

6 A. It depends. Normally you're not going to give your device
7 to someone else to log into. On your device, it's your login.
8 That would be more on a web browser that you may check your
9 email on somebody else's computer, and that only stays active
10 until that browser window is closed. If that browser window is
11 closed, that password is no longer active.

12 Q. There was discussion about location history being saved by
13 Google.

14 A. Yes.

15 Q. Does the Google save location history for, for instance,
16 the diormauricecarter@gmail.com account?

17 A. There was none.

18 Q. So there was none?

19 A. No.

20 Q. Why would that be the case?

21 A. I don't have a specific answer to that. Just that Google
22 did not collect any in that particular case.

23 Q. What are some of the reasons it would not be saved or
24 stored?

25 A. We see more of that data on someone who has a Google

1 Android phone. So one reason could be that the person used
2 some other phone than Android.

3 Q. Okay. What about if location services were turned off?

4 A. Then that would also be the case.

5 Q. You talked a little bit about specific -- you talked about
6 deletions and the practices of persons deleting things from
7 phones.

8 A. Yes.

9 Q. And that particular phone that you examined, the Boddie
10 phone, was there a specific period in which certain items had
11 been deleted?

12 A. Yes. When I look at the phone and when I look at this, I
13 look at the normal amount of call logs, calls going in and out,
14 text messages going in and out, and if I see there's a regular
15 amount, and there's a certain time period where there are none
16 and then those calls and texts continue again, that, combined
17 with call detail records that may come from a cell phone
18 provider, would allow me to say that a specific date and range
19 periods of data had been deleted.

20 Q. In this case you testified that it was from about
21 5:00 p.m. to about midnight on January 26, 2019?

22 A. That's correct, yes.

23 MR. MALLARD: No further questions, Your Honor.

24

25

1 RE CROSS-EXAMINATION

2 BY MR. SULTAN:

3 Q. Just on the subscriber point. If I'm logged into my
4 Google account on a PlayStation at my house, okay, for example,
5 unless I log out, log off, anybody can use that account on that
6 device, right?7 A. I don't have any particular experience with PlayStation,
8 when it comes to Google accounts. I could answer it on other
9 accounts. We don't see a lot of that when it comes through.

10 Q. Okay. How about a desktop computer?

11 A. Okay.

12 Q. If I'm logged into my Google account on my desktop
13 computer and I don't log off, and I go somewhere for a day or
14 two days or two hours, someone else can sit down and do a
15 Google search and it's going to come up under my subscriber
16 information, isn't it?

17 A. That is possible, yes.

18 Q. Thank you, sir.

19 THE COURT: You're excused.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: Guys, thanks all for the extra ten
22 minutes.23 I want you to go to bed tonight, tomorrow night and
24 Sunday night and pretend I said each one of these things to
25 you: Keep an open mind, no conversation with anyone and no

1 extracurricular research or homework. I know this is a long
2 stretch, and I don't want my instructions to dissipate over the
3 course of the three days. So completely put it out of your
4 mind. I think it's going to be a beautiful weekend. Don't
5 think about this again until you get back here on Monday. So
6 you won't be thinking about it or talking about it
7 inappropriately.

8 We'll start at 10:00 on Monday morning. Can I ask the
9 parties to stay for just a minute.

10 THE CLERK: All rise for the jury.
11 (Jury exits.)

12 THE COURT: I'm working on the jury instructions and
13 I'm just trying to simplify them a little bit. I want to run a
14 couple things by you before you go for the weekend.

15 The government's instructions you identify -- you
16 identify the robbery as taking place at a T-Mobile store that
17 does business as -- and the phones being taken either from the
18 store or from Mr. Dertelus, if that's how you pronounce his
19 name. Is there any objection to me just identifying the
20 robbery at the T-Mobile at that address?

21 MR. SULTAN: No, Your Honor.

22 MR. MALLARD: That's fine.

23 THE COURT: Is that all right? I think that
24 simplifies it.

25 The definition of robbery, you included all that

1 language about taking from a person or their friends or their
2 family or all that. Can all that friends and family stuff come
3 out, just to conform it to the facts of the case? Is that all
4 right?

5 MR. MacKINLAY: Yes.

6 MR. SULTAN: Yes.

7 THE COURT: And lastly, the brandishing charge. I'm
8 not clear on what the law allows, and I'm not clear on what you
9 intend with regard to -- are you limiting it to the use of a
10 firearm in the store, or are you considering the firing of the
11 gun from the car during the chase being part of the crime?

12 MR. MALLARD: I think that the firing of the gun
13 during the chase is also part of the crime, Your Honor.

14 THE COURT: Okay. The instructions are not really
15 clear on that, but okay. Let me futz around, and I'll give you
16 a draft on Monday. Okay?

17 Anything else before we go?

18 MR. SULTAN: No, Your Honor.

19 MR. MALLARD: No, Your Honor.

20 THE COURT: I'll be around 9:30 Monday morning if
21 anyone has anything. Okay.

22 MR. SULTAN: Have a good weekend.

23 THE COURT: Thanks. You all, too.

24 MR. MALLARD: Thank you.

25 (The proceedings adjourned at 2:13 p.m.)

C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS)

We certify that the foregoing is a correct transcript
from the record of proceedings taken March 6, 2020 in the
above-entitled matter to the best of my skill and ability.

/s/ Kathleen Mullen Silva

4/15/20

Kathleen Mullen Silva, RPR, CRR
Official Court Reporter

Date

/s/ Linda Walsh

4/15/20

Linda Walsh, RPR, CRR
Official Court Reporter

Date